[G.R. No. 214148. February 6, 2023.]

PHILLIPS SEAFOOD PHILIPPINES CORPORATION, *petitioner*, ***vs.*** **TUNA PROCESSORS, INC.**, *respondent*.

DECISION

M.V. LOPEZ, *J* p:

The importance of patents as a tool for national development and economic advancement cannot be overemphasized. They ensure the flow of knowledge and information by encouraging inventors to disclose their discoveries to the public. **1** In exchange, inventors are given market exclusivity or the right to exclude others from making, using, offering for sale, selling, or importing a patented product or product obtained from a patented process. **2** However, like any other intellectual property right, the exercise of this right is not without limitations. The extent of protection granted to patent holders is limited to the claims of their patent. **3**

Phillips Seafood Philippines Corporation's (Phillips) liability for infringing Philippine Patent No. I-31138 is the core issue in the present Petition for Review on *Certiorari* assailing the Court of Appeals' (CA) Amended Decision **4** dated February 28, 2014 and Resolution **5** dated August 29, 2014 in CA-G.R. SP No. 121498, which reversed the Intellectual Property Office's dismissal of the administrative complaint for patent infringement. **6**

FACTS OF THE CASE

Phillips is a domestic corporation engaged in processing fresh tuna and other seafood products. **7** Meanwhile, Tuna Processors, Inc. (TPI) is a foreign corporation organized and existing under the laws of the State of California, United States of America. **8** TPI is the successor-in-interest of Kanemitsu Yamaoka (Yamaoka). **9**

On May 5, 2003, Yamaoka filed an administrative Complaint **10** for patent infringement and preliminary injunction (PI) with prayer for the issuance of a temporary restraining order (TRO) against Phillips before the Intellectual Property Office's Bureau of Legal Affairs (BLA), docketed as IPV No. 10-2003-00007. Yamaoka stated in his Complaint that he is one of the patentees of Philippine Patent No. I-31138 **11** entitled "Method for Curing Fish and Meat by Extra Low Temperature Smoking" (Patent I-31138). **12** The independent claim of Patent I-31138 provides that the invention covers the process of curing tuna meat by exposing it to a filtered smoke cooled in a cooling unit to between 0º and 5ºC while retaining ingredients exerting highly preservative and sterilizing effects. Yamaoka has been using the patented process through Yamaoka Nippon Corporation (YNC) in General Santos City since 1994. Then, Pescarich Manufacturing Corporation (Pescarich) succeeded YNC. **13** Yamaoka claimed that in 2001, Phillips hired Pescarich's former employee, Bong Alvarado, to construct two smoke machines. Thereupon, Phillips has been using their patented process in curing its tuna products. **14**

For its part, Phillips denied infringing Patent I-31138. It alleged that its process does not require a cooling unit because the filtered smoke is only allowed to cool to ambient temperature before it is injected directly into the tuna meat. **15** Phillips also raised the invalidity of Patent I-31138 as a defense and argued that the patented process does not involve an inventive step and all the elements of Claim 1 already formed part of the prior. **16**

Issuance of TRO and WPI

A summary hearing on the application for TRO and/or PI was set on May 15, 2003. **17** Yamaoka presented his first witness, Vener Lacap (Lacap), Phillips' former plant

supervisor, on June 5, 2003. 18 He testified on Phillips' process, particularly the existence of a cooling unit that cools the filtered smoke to between 0º and 5ºC. 19 On October 6, 2003, however, the BLA conducted an ocular inspection in Phillips' plant 20 and did not find the cooling unit mentioned by Lacap. 21 As regards Phillips' process, the BLA observed:

> In the instant case, respondent burns materials, filters the smoke[,] and applies the filtered smoke to the tuna which is spontaneously cooled to 0º to 5ºC when refrigerated. It is of no consequence that the smoke is at ambient temperature when applied to the tuna. It was on these conditions obtaining that the result achieved in the prevention of discoloration are the same. 22

Nonetheless, the BLA gave weight to Lacap's testimony and his narration in detail of a pre-cooling unit during his employment with Phillips. 23 Consequently, the BLA issued a TRO against Phillips on November 24, 2003. 24 Phillips moved to reconsider, 25 but the BLA denied it in a resolution 26 dated January 29, 2004. The BLA made a preliminary finding that Phillips' process and Patent I-31138 achieve the same function and give the same result. The cooling of the filtered smoke to a temperature between 0º and 5ºC immediately after the injection of the ambient temperature filtered smoke to the tuna in Phillips' process yields the same result in Steps 3 and 4 of Patent I-31138, thus:

> At this point, this Office believes that the omission of the third step has not yielded any different result. As seen during the ocular inspection of respondent's process, filtered smoke at ambient temperature of 24ºC (Exhibit "6-E") after it was applied to tuna was immediately cooled. The temperature reading of smoke treated tuna was specifically at 0º to 5ºC (Exhibit "6-F"). The cooling of filtered smoke to a temperature of 0ºC to 5ºC immediately after injection of ambient temperature filtered smoke to the tuna yields the same result in Steps 3 and 4. The elements of respondent's process achieve the same function and gives *[sic]* the same result. 27

The BLA also issued a writ of preliminary injunction on April 20, 2004, directing Phillips to cease and desist from using the patented process on its tuna products for 90 days. 28 Phillips filed a motion for reconsideration, 29 which was denied in a July 30, 2004 Resolution. 30 The presentation of the parties' evidence ensued.

BLA Decision

On October 30, 2006, the BLA dismissed 31 Yamaoka's complaint for patent infringement and held that Phillips' process does not fall within the scope of Patent I-31138. 32 There is no literal infringement because Phillips' process does not include every element of Claims 1 and 2 of Patent I-31138. 33 Likewise, there is no infringement under the doctrine of equivalents because Phillips' process does not meet the function-means-and-result test. Phillips' process does not perform substantially the same function or operate in substantially the same way as Patent I-31138. For this reason, the two processes cannot achieve substantially the same result. 34

Appeal with ODG

Aggrieved, Yamaoka appealed to the Office of the Director General (ODG). He argued that the claims of his patent could be read literally from Phillips' process. Also, the combination of the steps in his patent claims is equivalent to Phillips' process. 35

On April 15, 2009, the ODG decided to call on Professor Teresita P. Acevedo (Prof. Acevedo), a technical expert from the Department of Food and Science and Nutrition, College of Home Economics of the University of the Philippines, instead of forming a panel of experts. 36 In her report, 37 Prof. Acevedo found that the food products of Philips and Patent I-31138 are different because the meat undergoes distinctly different curing

processes. She noted the differences in the filtration process, the temperature of the filtered smoke, and the manner of introducing the filtered smoke into the tuna meat. Consequently, Patent I-31138 and Phillips process produce different end products. **38**

Meanwhile, Yamaoka died on May 15, 2009. He was substituted by TPI in the proceedings. **39**

ODG Decision

On September 12, 2011, the ODG dismissed Yamaoka's appeal. **40** The ODG found no cogent reason to reverse and set aside the BLA's Decision dismissing Yamaoka's complaint for patent infringement. **41** The ODG summarized the parties' processes as follows:

YAMAOKA'S PROCESS/CLAIM	PHILLIPS' PROCESS
1. Burning a smoking material at 250ºC to 400ºC; 2. Passing the produced smoke through a filter to remove mainly tar therefrom; 3. Cooling the smoke passed through the filter in a cooling unit between 0º and 5ºC; and 4. Smoking the tuna meat at extra-low temperatures by exposure to the smoke cooled between 0º and 5ºC.	1. Burning sawdust at 250º to 400ºC; 2. Passing the produced smoke through a series of filters to remove tar, odor[,] and other impurities; 3. Storing the filtered smoke in a plastic bladder (canvass); 4. Transporting the plastic bladder to production area where the filtered smoke is transferred through a compressor and injected to the raw tuna meat; and placing of the injected tuna into a refrigeration unit with a temperature setting of -3ºC. **42**

The ODG observed that Phillips' process does not require a cooling unit to cool the produced smoke to between 0º and 5ºC, and smoking the tuna meat by exposing it to the smoke cooled to between 0º and 5ºC. Therefore, Phillips process does not literally infringe Patent I-31138. **43** The ODG likewise upheld the BLA's finding that Yamaoka failed to satisfy the function-means-result test to justify his infringement claim under the doctrine of equivalents, **44** to *wit*:

> This Office noticed that Phillips' process did not indicate the use of a cooling unit to cool the produced smoke to between 0ºC and 5ºC. Also[,] Yamaoka's claim of smoking the tuna meat at extra-low temperatures by exposure to the smoke cooled to between 0ºC and 5ºC is also not present in Phillips' process. Conversely, Phillips' process includes the following which are not present in Yamaoka's patent claims: first, the passing through a series of filters to remove tar, odor [,]and other impurities; second, the storing of the filtered smoke in a plastic bag at room temperature; third, the injection of filtered smoke in the raw tuna meat; and lastly, the placing of the injected tuna into a refrigeration unit with a temperature setting of -3ºC.
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> Thus, there is no basis for claiming that Phillips' process literally infringed Letters Patent No. 31138. Not all material elements included in the claims of Letters Patent No. 31138 are found in the Phillips' process, which on the other hand, provided steps and elements not found in Yamaoka's letters patent x x x **45**

xxx xxx xxx

A scrutiny of the claims in Letters Patent No. 31138 and the Appellee's process show differences in their respective function, means, and result. This Office agrees with the Director's observations:

> Firstly, in the second step of Claim 1 or the filtering step, the objectives or obtaining results of the two processes are quite different. The filtering step in Claim 1 is limited to remove mainly tar. On the other hand, Respondent apparently, would like to obtain a better result rather than just removal of tar. It wants the smoke produced to be odorless and tasteless, and this result can be achieved by removing other impurities in the smoke by further passing the smoke through a series of filters. The Bureau likewise observes Respondent's filtration process employing a multiple filtration system to produce an odorless and tasteless smoke, during the ocular inspection conducted at Respondent's plant in General Santos City on 6 October 2003. It can thus be clearly concluded that the filtering step of the Respondent's process operates in a very different way producing a substantially different result or product of an odorless and tasteless smoke.
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> xxx xxx xxx
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> Secondly, the third step of Claim 1 or the cooling of filtered smoke step in Letters Patent No. I-31138 which is claimed as an independent and indispensable step to deliberately cool down smoke to between 0º and 5ºC has no equivalent step in Respondent's process. There are substantially different temperatures employed by the two processes in the cooling of the filtered smoke. The Respondent's process does not require the smoke to be cooled at a specific low temperature in a cooling unit before its application to the tuna meat. As observed, in Respondent's process, the filtered odorless[,] and tasteless smoke is allowed to cool down to ambient temperature in a plastic bladder (canvass) before it is applied to the tuna by injector. On the other hand, the claimed step, cools down the smoke in a cooling unit strictly to a temperature between 0º and 5ºC.
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> Lastly, the smoking/curing step *[sic]* in both processes are different. In the claimed process, the smoke cooled at temperature *[sic]* between 0º and 5ºC is exposed to the tuna. The specification describes that the smoke introduced from the smoke-cooling unit is brought into contact with pieces of fish or meat arranged in the smoking chamber. It would appear that only the outer surface of the tuna meat is in contact and exposed with *[sic]* the smoke. In contrast, in Respondent's process, the compressed smoke cooled down at ambient temperature is injected directly to the loin of the tuna meat. Moreover, Claim 2 of the subject patent does not mention of the tuna meat being frozen prior to its smoking or curing. Instead, salt is applied to the raw tuna as a pre-treatment method to improve the smell and

> taste of the tuna meat (Claim 2 of the patent), whereas, the Respondent's process substantially freezes beforehand the tuna meat through washing and immersion in ice at about 0º to 4.4ºC. This pretreatment method is done to keep the tuna fresh. **46**

TPI elevated the case to the CA through a Petition for Review on *Certiorari*. **47** TPI maintained that Phillips infringed its patent both literally and under the doctrine of equivalents. **48**

CA Decision

Acting on the petition, the CA issued a Decision **49** dated June 25, 2013, dismissing TPI's appeal and upholding the ODG's finding that Phillips' process does not infringe Patent I-31138. The CA compared both processes and found that they differ in the manner of applying the filtered smoke to the tuna meat. The CA observed:

> x x x [I]n Yamaoka's process, the filtered smoke is first cooled to a temperature of about 0º to 5ºC and this cooled smoke is then applied to the tuna meat. **Thus, it is immediately apparent that in Yamaoka's process, the filtered smoke is pre-cooled to a temperature between 0º to 5ºC. This pre-cooling of the filtered smoke at a certain temperature is markedly absent in the respondent's process. Instead, in the respondent's process, the filtered smoke, that *[sic]* appears to have been not pre-cooled, is injected into the raw tuna meat [,] and the tuna meat is then placed into a refrigeration unit with a temperature setting of -3ºC**. **50**
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> Besides, the Court is of the view that the respondent's process contains marked differences from the Yamaoka process that would logically result in having a differential final product. **The filtering step in the Yamaoka process claims to "remove mainly tar therefrom." On the other hand, the respondent's filtering in its process aims to "remove tar and odor."** The Court does not agree with the petitioner's argument that Claim 1, as worded, covers any amount of filtration "as long as tar is removed." To the Court's mind, the phrase "to remove mainly tar therefrom" should be construed strictly so that a smoking process that filtered out tar as well as some other element, such as odor, would not be covered by the claim. Indeed, it is not hard to logically conclude that, since the respondent's filtering process involves not only the removal of tar from the smoke that is produced from the respondent's process but the removal of odor as well, the kind of smoke produced in the Yamaoka process is different from the smoke produced in the respondent's process as only "mainly tar" is removed from the former. The Court therefore agrees that certain flavor giving elements, such as odor, would remain in the filtered smoke in the Yamaoka process.
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> Thus, while both processes employ a filtering step, **the filtering step in the respondent's process is markedly different from that of the Yamaoka process. As the petitioner failed to show evidence in this case that the end product result of the two processes is essentially the same, the Court has no other choice but to conclude that they are different on account of the different processes used in curing the tuna meat**. Indeed, as correctly opined by Dr. Acevedo in her report whose expertise as a food scientist has not been questioned, "since the tuna meat undergoes distinctly different processing methods of curing, the final food

products have definitely different product characteristics and should be regarded as such." **51** (Emphasis supplied)

TPI sought reconsideration. Among other arguments, TPI insisted that the phrase "to remove mainly tar" covers a filtering step that removes impurities other than tar. **52**

Amended CA Decision

On February 28, 2014, the CA maintained that there is no literal infringement. But after a review of the parties' arguments, it ruled that there is infringement under the doctrine of equivalents because both processes involve the burning of combustible material to produce smoke, filtration of the smoke, cooling of filtered smoke before curing, and curing tuna meat with cold filtered smoke, thus:

> After taking a second look, the Court is of the view that the aforesaid processes covered by Letter's Patent No. 31138 and that used by the respondent are **substantially similar, *i.e.*, both processes are similar in the burning of combustible material to produce smoke, filtration of the resulting smoke, cooling of filtered smoke before curing, and curing tuna meat with cold filtered smoke**.
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> True, there are slight differences. However, under the doctrine of equivalents, infringement also takes place when a device appropriates a prior invention by incorporating its innovative concept and, although with some modification and change, performs substantially the same function in substantially the same way to achieve substantially the sale result. (*Godines vs. Court of Appeals*, 226 SCRA 338 [1993]). **53**
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> x x x However, after review, the Court is convinced that **it erred in its construction of the phrase "to remove mainly tar" when it construed the same as to mean the removal of tar alone and nothing else thereby equating the word "mainly" with "only" which is incorrect**. Obviously, the word "mainly" is not equivalent to the word "only." The language employed in Claim 1, *i.e.*, "to remove mainly tar therefrom," is clear that the objective end of the result is to remove impurities mainly tar and this should not be construed to mean that other elements such as odor are not removed in the Yamaoka process as claimed under Claim 1. Thus, it is crystal clear that the objective end result of the filtering process utilized by both the Yamaoka process and that of the respondent's is the removal of impurities involving mainly tar. In effect, the filtration of the resulting smoke being undertaken by the petitioner and the respondent are substantially the same. **54** (Emphasis supplied)

The CA reconsidered its construction of the phrase "to remove mainly tar." Initially, it equated the word mainly to only, making the objective of the Patent I-31138's filtration process different from Phillips', *i.e.*, to remove tar and odor. The CA clarified that the phrase "to remove mainly tar" should not be construed to mean that only tar is removed, and other elements such as odor are not removed. For this reason, the parties' respective filtration processes are substantially the same in that both aim to remove tar and other impurities. Therefore, Phillips is liable for patent infringement under the doctrine of equivalents. The dispositive portion of the Decision reads:

> **WHEREFORE**, in view of the foregoing, the petition is hereby **GRANTED** and the assailed Decision, dated September 12, 2011, of the Office of the Director General of the Intellectual Property Office in Appeal No. 10-06-03 is **REVERSED** and **SET ASIDE**.
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> Respondent, Phillips Seafood Philippines Corporation, and persons acting in *[sic]* its behalf, are directed to *cease* and *desist* from using the

patented process, Letters Patent No. I-31138, of petitioner and from selling and offering for sale of the products obtained directly or indirectly from the patented process.

SO ORDERED. 55

Phillips filed a motion for reconsideration, which the CA denied in an August 29, 2014 Resolution. 56 Hence, this recourse.

PARTIES' ARGUMENTS

Phillips mainly argues that the CA erred in finding that it infringed Patent I-31138 under the doctrine of equivalents. It insists that the CA misconstrued the phrase "to remove mainly tar therefrom." Even if the CA's claim construction is correct, it is insufficient to support the finding of infringement under the doctrine of equivalents. TPI failed to show that the products of the two processes are substantially the same.

On the other hand, TPI maintains that Phillips' process infringes Patent I-31138, literally and under the doctrine of equivalents. The invention as a whole shows that both processes involve the burning of combustible materials to produce smoke, filtering of the resulting smoke to remove tar, cooling of filtered smoke to a temperature of about 0ºC to 5ºC before curing, and curing of tuna meat with the cold filtered smoke.

ISSUES

I. Whether the CA's interpretation of the phrase *"to remove mainly tar therefrom"* in Claim 1 is proper.

II. Whether Phillips' process infringes Patent I-31138.

RULING

The CA correctly interpreted the phrase *"to remove mainly tar therefrom,"* but this interpretation is insufficient to support TPI's patent infringement claim.

A patentable invention includes any technical solution to a problem in any field of human activity which is new, involves an inventive step, and is industrially applicable. It may be a product, process, or an improvement of an existing product or process. 57 To be protected, an invention must be covered by a patent.

In the Philippines, a patent application must contain (a) a duly accomplished request for the grant of patent, (b) a description of the invention, (c) a drawing(s) necessary for the understanding of the invention, (d) one or more claims, and (e) an abstract. 58 Once granted, the patent confers on its owner the exclusive right to restrain, prohibit and prevent any unauthorized person or entity from making, using, offering for sale, selling, or importing the patented product or product obtained directly or indirectly from a patented process or the unauthorized use of a patented process. 59 A violation of this right constitutes patent infringement under Section 76.1 of the Intellectual Property (IP) Code and Section 1 (m) of the Rules and Regulations on Administrative Complaints for Violation of Laws Involving Intellectual Property Rights, thus:

> Section 76. *Civil Action for Infringement*. — 76.1. The making, using, offering for sale, selling, or importing, a patented product or a product obtained directly or indirectly from a patented process, or the use of a patented process without the authorization of the patentee constitutes patent infringement.
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> Section 1(m) "Infringement of Patent" means any violation of any of the rights of patentees and holders of utility model patents and industrial design registrations under Part II of the IP Code and/or the applicable IP Law, including the act of making, using, offering for sale, selling, or importing a patented product or a product obtained directly or indirectly from

a patented process, or the use of a patented process without the authorization of the patentee.

Determining the existence of infringement requires a two-step analysis. First, the court interprets the claims to determine the patent's scope and meaning. Second, the court measures the allegedly-infringing product or process against the standard of the properly interpreted claims. **60**

I.

Claims Interpretation

A patent certificate issued under the IP Code is registered, together with the description, claims, and drawings, in the IPO. **61** The description contains the disclosure of the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art. **62** The claims succinctly state the essence of the invention or the elements which distinguish it from the prior art. **63** Lastly, the drawings show every feature of the invention covered by the claims. **64**

Claims perform two functions, namely: definitional and public notice. **65** First, the claims define the scope of protection granted to a patented product or process. It particularly points out and distinctly claims the part, improvement, or combination of the invention. Second, claims inform the public and the courts of the extent of protection conferred by the patent. **66** Therefore, the claims should be clear, concise, and supported by the description.

The two basic kinds of claims are process and product claims. Claim of an activity or process covers all kinds of activities where the use of some material product is implied to carry out the process. In contrast, a product claim may include substances, compositions, objects, articles, apparatus, machines, or systems of co-operating apparatus. **67** As to form, claims may either be independent or dependent. An independent claim, on its own, defines the technical features of the invention protected by the patent. **68** It contains the essential features of the invention. **69** On the other hand, a dependent claim refers back to and limits another claim in the application. **70** Basically, dependent claims include all the features of another claim. **71** Thus, a dependent claim may only be infringed if all the features of the other claim, on which it depends, are infringed. **72** Necessarily, a court often limits its examination to independent claims. Besides, infringement of at least one independent claim carries the same effect as infringing all dependent claims. **73** Stated differently, infringement of an independent claim is sufficient to support a claim of patent infringement.

Relevantly, in *Smith Kline v. CA*, **74** the Court emphasized the importance of claims in determining the patentee's rights, thus:

> **When the language of its claims is clear and distinct, the patentee is bound thereby and may not claim anything beyond them**. And so are the courts bound which **may not add to or detract from the claims matters not expressed or necessarily implied, nor may they enlarge the patent beyond the scope of that which the inventor claimed and the patent office allowed**, even if the patentee may have been entitled to something more than the words it has chosen would include. **75** (Emphasis supplied)

In sum, the language of the claims limits the scope of protection granted by the patent. The patentees, in enforcing their rights, and the courts in interpreting the claims, cannot go beyond what is stated in the claims, especially when the language is clear and distinct. If not, the IP Code and the Revised Implementing Rules and Regulations (IRR) for Patents, Utility Models, and Industrial Designs instruct that reference to the description and drawings may be done to ascertain the meaning of the terms in the claims. **76**

Patent I-31138

Patent I-31138 is a process patent covering a method of curing tuna meat using a filtered smoke cooled to between 0ºC and 5ºC. The claims of Patent I-31138 are:

> 1. A method for curing raw tuna meat by extra-low temperature smoking comprising the steps of burning a smoking material at 250º to 400ºC and passing the produced smoke through a filter to remove mainly tar therefrom:
>
> Cooling the smoke passed through the filter in a cooling unit to between 0º and 5ºC while retaining ingredients exerting highly preservative and sterilizing effects; and smoking the tuna meat at extra-low temperature by exposure to the smoke cooled to between 0º and 5ºC.
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> 2. A method for curing raw tuna by extra-low temperature smoking according to claim 1, in which raw tuna is pre-immersed in a saltwater, desalted in cold water, and dewatered before being smoked at said extra-low temperature. **77**

A reading of the independent claim (Claim 1) reveals that the patented process has the following steps:

> (a) Burning of smoking material at 250º to 400ºC;
>
> (b) Filtering of the produced smoke to remove mainly tar;
>
> (c) Cooling of the filtered smoke in a cooling unit to a temperature between 0º and 5ºC while retaining ingredients exerting highly preservative and sterilizing effects; and
>
> (d) Smoking the tuna meat by exposing it to the filtered smoke cooled to between 0º and 5ºC.

These steps comprise the elements of Claim 1. The inventive step of Patent I-31138 is smoking tuna meat at extra low temperatures between 0º and 5ºC. The Court notes that "[c]onventional smoking has been carried out in three temperature zones: low-temperature smoking between 20º and 40ºC, medium-temperature smoking between 40º and 80ºC, and high-temperature smoking above 80ºC." **78** The reason for bringing down the temperature further to between 0º and 5ºC is explained in the Patent I-31138's *Summary of the Invention*, to *wit*:

> x x x When **smoking is effected at temperatures between 0º and 5ºC** using the smoke generated between 250ºC and 400ºC, **maximum sterilizing and decomposition and discoloration preventing effects are obtainable**. **79**
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> xxx xxx xxx
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> x x x The **effects of the smoke decrease if its temperature is lower than the specified range. If the smoke temperature is higher than the specified range, the risk of damaging the freshness of fish or meat increases**. **80** (Emphasis supplied)

The IPO and the CA likewise interpreted Claim 1 to include four steps, but their interpretations of the phrase "to remove mainly tar therefrom" differ. For the IPO, Patent I-31138 only requires the use of one filter, such that only tar can be removed from the smoke. **81** Meanwhile, the CA found that the phrase "to remove mainly tar therefrom" means that the objective and result of the filtering step is to remove impurities, but mainly tar. The phrase should not be construed to mean that other elements, such as odor, are not removed. **82** Put simply, the CA opined that the word "mainly" should not be equated to "only."

We agree with the CA's interpretation of the phrase "to remove mainly tar therefrom."

Generally, factual findings of administrative bodies charged with their specific field of expertise are afforded great weight by the courts. It becomes conclusive if there is no substantial showing that such findings were made from an erroneous evaluation of evidence. **83** Such is not the case here. A reading of Claim 1 and the *Description of Preferred Embodiments* indicates that the filtering step in Patent I-31138 covers the use of various types of filters to remove tar components and other impurities in the smoke by using various types of filters. Whether the Court interprets "mainly" in its ordinary meaning or in light of its use in the patent specification, it means for the most part, primarily, or mostly. The use of "mainly" reveals the main objective of removing tar without limiting the subject of removal to only tar. Thus, the phrase "to remove mainly tar therefrom" can be equated to "remove mostly tar."

Interpreting "to remove mainly tar therefrom" to mean that only tar is removed in the filtering step of Patent I-31138 renders "mainly" useless, limits the scope of Claim 1, and contradicts the *Description of Preferred Embodiments*. A scrutiny of the patent documents shows that Patent I-31138 covers the use of multiple filters to remove tar and other smoke components:

(a) Lines 19-22 page 12 state that **the filtering unit removes mainly tar but retains ingredients exerting highly preservative and sterilizing action**. **84**

(b) Lines 14-20 page 13 provide that the kind of the filters "optimum for each individual fish or meat to be processed must be found by experience. **Choice and changing of filters can be effected easily**. For example, **suitable number of different kinds of filters or different numbers of filters of the same kind may be selected and changed easily**." **85**

(c) Lines 20-23 page 8 state that "**various types of filters catching relatively larger particles** consisting mainly of tar can be **used singly or by combining filters of different mesh sizes**." **86**

These portions of the *Description of Preferred Embodiments* convey that the particles which should be filtered from the smoke produced by burning the smoking materials consist mainly of tar. However, it must be emphasized that the filtration of particles other than tar is not precluded. As explained by the technical expert, Prof. Acevedo, the smoke produced from burning wood and other organic fuels contains water vapor, carbon dioxide, carbon monoxide, methane, tiny particulates of tar, soot, and trace elements, and over 390 microscopic compounds occurring either, or both, in particulates and gaseous vapor phase. The particulate phase includes a high level of undesirable pollutants like tar, soot, ash, and char, and the filtration of these pollutants in the particulate phase is typical in smoking foods. **87** Therefore, in using "mainly" in the phrase "to remove mainly tar therefrom," Yamaoka and his co-patentees only stated the primary purpose of the filtration process and emphasized the importance of removing tar from the smoke.

II.

In patent infringement, the evidence required before the IPO is substantial evidence or that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. **88** The burden of proving patent infringement rests on the plaintiff. **89** But for process patents, the IP Code creates a presumption that an identical product was obtained from the patented process if (a) the product is new or (b) there is a substantial likelihood that the identical product was made by the process, and the patentee was unable, despite reasonable efforts, to determine the process actually

used. Therefore, the burden of proving that the process to obtain the identical product is different from the patented process rests on the defendant. **90** Such is not the case here. For one, smoked tuna fish is not a new product. For another, there is no substantial likelihood that Phillips' smoked tuna fish was made using the patented process because the use of filtered smoke cooled to between 0º and 5ºC is not the only way to produce smoked tuna fish. As previously discussed, conventional smoking can be done in three temperature zones **91** not covered by Patent I-31138. Ergo, the burden of proof rests on TPI and its predecessors-in-interest.

Tests of Infringement

The Court, in *Godines v. CA* (Godines), **92** identified the following tests in determining patent infringement:

> Tests have been established to determine infringement. These are (a) **literal infringement**; and (b) the **doctrine of equivalents**. In using literal infringement as a test, "x x x **resort must be had, in the first instance, to the words of the claim**. If **accused matter clearly falls within the claim, infringement is made out** and that is the end of it." To determine whether the particular item falls within the literal meaning of the patent claims, the Court must juxtapose the claims of the patent and the accused product within the overall context of the claims and specifications, to determine whether there is exact identity of all material elements.
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> xxx xxx xxx
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> . . . **courts have adopted the doctrine of equivalents which recognizes that minor modifications in a patented invention are sufficient to put the item beyond the scope of literal infringement**. Thus, according to this doctrine, "**(a)n infringement also occurs when a device appropriates a prior invention** by incorporating its innovative concept and, albeit with some modification and change, **performs substantially the same function in substantially the same way to achieve substantially the same result**." **93** (Emphasis supplied; citation omitted)

Back then, the Court relied on foreign jurisprudence in applying the doctrine of equivalents to determine patent infringement. But with the effectivity of the IP Code, the extent of patent protection under the claims' literal meaning and its equivalent can now be read in Section 75:

> Section 75. Extent of Protection and Interpretation of Claims. — 75.1. The **extent of protection conferred by the patent shall be determined by the claims**, which are to be interpreted in the light of the description and drawings.
>
> 75.2. For the purpose of **determining the extent of protection conferred by the patent**, due account shall be taken of **elements which are equivalent to the elements expressed in the claims**, so that a **claim shall be considered to cover not only all the elements as expressed therein**, but also **equivalents**. (Emphasis supplied)

a. Literal Infringement Test

Under the literal infringement test, courts consider the elements of the invention as expressed in the claim(s). If the allegedly-infringing product or process falls within the literal meaning of the claim(s), there is patent infringement. **94**

In *Godines*, the Court applied the literal infringement test in determining whether the petitioner, the proprietor of the floating power tiller, infringed the patent for a turtle

power tiller covering a "farm implement but more particularly to a **turtle hand tractor** having a **vacuumatic housing float on which the engine drive is held in place**, the **operating handle**, the **harrow housing with its operating handle** and the **paddy wheel protective covering**." The Court considered the trial court's observation during the inspection of the devices, to *wit*:

> "Samples of the defendant's floating power tiller have been produced and inspected by the court and compared with that of the turtle power tiller of the plaintiff (see Exhibits H to H-28). **In appearance and form, both the floating power tillers of the defendant and the turtle power tiller of the plaintiff are virtually the same**. Defendant admitted to the Court that two (2) of the power tillers inspected on March 12, 1984, were manufactured and sold by him (see TSN, March 12, 1984, p. 7). The three power tillers were placed alongside with each other. At the center was the turtle power tiller of plaintiff, and on both sides thereof were the floating power tillers of defendant (Exhibits H to H-2). Witness Rodrigo took photographs of the same power tillers (front, side, top and back views for purposes of comparison (see Exbibits H-4 to H-28). **Viewed from any perspective or angle, the power tiller of the defendant is identical and similar to that of the turtle power tiller of plaintiff in form, configuration, design[,] and appearance. The parts or components thereof are virtually the same. Both have the circularly-shaped vacuumatic housing float, a pair of paddy in front, a protective water covering, a transmission box housing the transmission gears, a handle which *[sic]* is V-shaped and inclined upwardly, attached to the side of the vacuumatic housing float and supported by the upstanding G.I. pipes and an engine base at the top midportion of the vacuumatic housing float to which the engine drive may be attached. In operation, the floating power tiller of the defendant operates also in similar manner as the turtle power tiller of plaintiff**. This was admitted by the defendant himself in court that they are operating on the same principles. **95** (Emphasis supplied, citations omitted)

After comparing the patent claim and the petitioner's floating power tiller, the Court was convinced that the petitioner is liable for patent infringement thus:

> It appears from the foregoing observation of the trial court that **these claims of the patent and the features of the patented utility model were copied by petitioner**. We are **compelled to arrive at no other conclusion but that there was infringement**. **96** (Emphasis supplied, citations omitted)

b. Doctrine of Equivalents Test

Under the doctrine of equivalents test, the courts consider whether the elements in the alleged-infringing product or process are equivalent to the elements expressed in the patent's claim(s). There is patent infringement if the allegedly-infringing product or process appropriates the innovative concept of the patent, and despite the modifications introduced in the infringing product or process, it still performs substantially the same functions, in the same way, to produce the same result. **97**

As early as 1909, the Court acknowledged the applicability of the doctrine of equivalents, then called mechanical equivalents, in *Gsell v. Yap-Jue*, (Gsell). **98** The case involved the patented process of manufacturing curved handles for canes, parasols, and umbrellas using a small lamp or blowpipe fed with petroleum or mineral oil in manufacturing the curved handles. The defendant in that case used a blast lamp with a different shape and fed it with alcohol. The Court ruled that there is patent infringement because the defendant merely introduced unessential changes which did not affect the

principle of the blast lamp used in the patented process. Alcohol is equivalent to petroleum or mineral oil, and the shape of the blast lamp does not affect how the blast lamp works:

> x x x at the trial of this case testimony was introduced which, in our opinion, leaves no room for doubt, first, **that alcohol is an equivalent or substitute, which known as such at the time when the patent was issued, for mineral oil or petroleum, in connection with blast lamps or blowpipes such as that which plaintiff uses in the patented process**, and, second, that **the use of a blast lamp or blowpipe fed with petroleum or mineral oil, rather than one fed with alcohol, is an unessential part of the patented process the use of which was prohibited by the said judgment**.
>
> It was clearly proven at the trial, that **kerosene and alcohol blast lamps are agencies for producing and applying heat, well known throughout the world long, prior to 1906, the date of the issue of the patent x x x**.
>
> xxx xxx xxx
>
> The plaintiff does not and cannot claim a patent upon the particular lamp used by him. The patent, however, gives him the exclusive right to the use of "la lamparilla o soplete, alimentada de petroleo o esencia mineral" (the small lamp or blowpipe fed with petroleum or mineral oil) in manufacturing curved handles for umbrellas and canes, to which reference is made in the above-cited descriptive statement and annexed note. "The small lamp or blowpipe" mentioned in the descriptive statement and annexed note which accompanied the application for the patent, evidently **referred to the design of a blast lamp which was attached thereto; and in our opinion both plaintiff and defendant make use of a blast lamp substantially similar, in principle and design, to that referred to in the descriptive statement and the annexed note, for the exclusive use of which in the manufacture of curved handles, plaintiff holds a patent**. True, defendant's **blast lamp is fed with alcohol, and its shape varies in unimportant details**, for the purpose of accommodating the principle, by which the flame is secured, to the different physical and chemical composition of the fuel used therein; **but the principle on which it works, its mode of application, and its general design distinguish it in no essential particular from that used by the plaintiff**. If the original design accompanying the statement had shown a blast lamp made of brass or delf, he would be a reckless advocate who would claim that the patent might lawfully be evaded by the use of a lamp made of iron or tin; or if the original design had shown a blast lamp 6 inches high, with a nozzle 4 inches long it would hardly be seriously contended that the use of a lamp 8 inches high with a nozzle 3 inches long would protect the ingenious individual, who in all other respects borrowed the patented process, from the consequences of an action for damages for infringement. But in the light of the evidence of record in this case, the reasoning upon which these hypothetical claims should be rejected applies with equal force to the contentions of the defendant, the ground for the rejection of the claims in each case being the same, and resting on the fact that **unessential changes, which do not affect the principle of the blast lamp used in the patented process, or the mode of application of heat authorized by the patent, are not sufficient to support a contention that the process in one case is in any essential particular different from that used in the other**.

> Counsel for plaintiff invokes the **doctrine of "mechanical equivalents" in support of his contention, and indeed that doctrine is strikingly applicable to the facts in this case**. This doctrine is founded upon sound rules of reason and logic, and unless restrained or modified by law in a particular jurisdiction, is of universal application, so that it matters not whether a patent be issued by one sovereignty or another, **the doctrine may properly be invoked to protect the patentee from colorable invasions of his patent under the guise of a substitution of some part of his invention by some well-known mechanical equivalent x x x 99** (Emphasis supplied, citations omitted)

The Court cited United States Federal Courts' decisions to serve as a guide in applying the doctrine of equivalents. Essentially, the US Federal Court cases acknowledge the right of the patentee against a person who employs all the elements of a patent but adopts mere formal alterations or substitutes for one of the elements.

Later, in the case of *Del Rosario v. CA*, **100** (Del Rosario) the Court again applied the doctrine of equivalents. This time, the patents cover audio equipment and improved audio equipment commonly known as the sing-along system or karaoke. The Court stressed the importance of the similarities of the functions, means, and results between the two audio equipment in this wise:

> It is elementary that a patent may be infringed where the essential or substantial features of the patented invention are taken or appropriated, or the device, machine or other subject matter alleged to infringe is substantially identical with the patented invention. **In order to infringe a patent, a machine or device must perform the same function, or accomplish the same result by identical or substantially identical means and the principle or mode of operation must be substantially the same**.
>
> It may be noted that respondent corporation failed to present before the trial court a clear, competent and reliable comparison between its own model and that of petitioner, and disregarded completely petitioner's Utility Model No. 6237 which improved on his first patented model. Notwithstanding the differences cited by respondent corporation, it did not refute and disprove the allegations of petitioner before the trial court that: (a) **both are used by a singer to sing and amplify his voice**; (b) both are used to sing with a **minus-one or multiplex tapes**, or that both are used to play minus-one or standard cassette tapes for singing or for listening to; (c) both are used to sing with a minus-one tape and multiplex tape and to **record the singing and the accompaniment**; (d) both are used to sing with **live accompaniment and to record the same**; (e) both are used to **enhance the voice of the singer using echo effect, treble, bass and other controls**; (g) both are equipped with **cassette tape decks** which are installed with one being used for playback and the other, for recording the singer and the accompaniment, and both may also be used to record a speaker's voice or instrumental playing, like the guitar and other instruments; (h) both are encased in **a box-like cabinets**; and (i) **both can be used with one or more microphones**.
>
> Clearly, therefore, **both petitioner's and respondent's models involve substantially the same modes of operation** and produce substantially the same if not identical results when used. **101** (Emphasis supplied, citations omitted)

In *Smith Kline v. CA*, **102** the Court similarly applied the functions-means-and-result test or triple identity test to determine the existence of patent infringement involving

methods and compositions for producing biphasic parasiticide activity using methyl 5 Propylthio-2-Benzimadole Carbamate. The Court ruled that there is no patent infringement because the patentee failed to prove that the allegedly-infringing compound operates in substantially the same way or by substantially the same means as the patented compound, thus:

> The doctrine of equivalents provides that an infringement also takes place when a device appropriates a prior invention by incorporating its innovative concept and, although with some modification and change, performs substantially the same function in substantially the same way to achieve substantially the same result. Yet again, **a scrutiny of petitioner's evidence fails to convince this Court of the substantial sameness of petitioner's patented compound and Albendazole**. While **both compounds have the effect of neutralizing parasites in animals, identity of result does not amount to infringement of patent** unless Albendazole operates in substantially the same way or by substantially the same means as the patented compound, even though it performs the same function and achieves the same result. In other words, **the principle or mode of operation must be the same or substantially the same**.
>
> The doctrine of equivalents thus requires satisfaction of the function-means-and-result test, the patentee having the burden to show that all three components of such equivalency test are met.
>
> As stated early on, **petitioner's evidence fails to explain how Albendazole is in every essential detail identical to methyl 5 propylthio-2-benzimidazole carbamate. Apart from the fact that Albendazole is an anthelmintic agent like methyl 5 propylthio-2-benzimidazole carbamate, nothing more is asserted and accordingly substantiated regarding the method or means by which Albendazole weeds out parasites in animals**, thus giving no information on whether that method is substantially the same as the manner by which petitioner's compound works. The testimony of Dr. Orinion lends no support to petitioner's cause, he not having been presented or qualified as an expert witness who has the knowledge or expertise on the matter of chemical compounds. **103** (Emphasis supplied, citations omitted)

Gsell, Del Rosario, and *Smith Kline* demonstrated how the Court determined patent infringement under the doctrine of equivalents. *Gsell* employed the **insubstantial difference test** on a patented process. Under the insubstantial difference test, there is patent infringement when the infringer appropriates the patent but adopts insubstantial changes. The change is insubstantial if a person skilled in the art is aware that the change is a mere substitute for the replaced element. Meanwhile, *Del Rosario* and *Smith Kline*, respectively used the **triple identity test** in a product and process patent. Under the triple identity test, there is patent infringement if the allegedly-infringing device or process performs substantially the same function and accomplishes substantially the same result by using substantially the same means.

In the US case of *Warner-Jenkinson v. Hilton Davis*, **104** these tests were regarded as the linguistic framework for determining equivalence under the doctrine of equivalents. In the same case, the US Supreme Court introduced the **all elements test** in determining equivalence. Under this test, courts consider the individual elements in a patent claim to define the scope of the patented invention, rather than considering the invention as a whole. The all elements test was developed to avoid the possibility that courts will enlarge the scope of a patent when applied too broadly to the invention as a whole as to eliminate an element in its entirety, *viz.*:

x x x. There can be no denying that **the doctrine of equivalents, when applied broadly, conflicts with the definitional and public notice functions of the statutory claiming requirement**. Judge Nies identified one means of avoiding this conflict:

> "[A] distinction can be drawn that it is not too esoteric between substitution of an equivalent for a component *in* an invention and enlarging the metes and bounds of the invention *beyond* what is claimed.
>
> xxx xxx xxx
>
> "Where a claim to an invention is expressed as a combination of elements, as here, 'equivalents' in the sobriquet 'Doctrine of Equivalents' refers to the equivalency of an *element* or *part* of the invention with one that is substituted in the accused product or process.
>
> xxx xxx xxx
>
> "This view that the accused device or process must be more than 'equivalent' *overall* reconciles the Supreme Court's position on infringement by equivalents with its concurrent statements that 'the courts have no right to enlarge a patent beyond the scope of its claims as allowed by the Patent Office.' [Citations omitted.] The 'scope' is not enlarged if the courts do not go beyond the substitution of equivalent elements." 62 F. 3d, at 1573-1574 **105** (Dissenting opinion) (Emphasis in original).

We concur with this apt reconciliation of our two lines of precedent. **Each element contained in a patent claim is deemed material to defining the scope of the patented invention, and thus the doctrine of equivalents must be applied to individual elements of the claim, not to the invention as a whole**. It is important to ensure that the application of the doctrine, even as to an individual element, is **not allowed such broad play as to effectively eliminate that element in its entirety**. So long as the **doctrine of equivalents does not encroach beyond the limits just described, or beyond related limits to be discussed *infra* this page** and 31-34, 39, n.8, and 39-40, **we are confident that the** doctrine will not vitiate the central functions of the patent claims themselves. **106** (Emphasis supplied)

In our jurisdiction, the Court has not yet applied the all elements test, but Section 75.2 of the IP Code states that in determining the extent of protection conferred by a patent, elements in the allegedly-infringing device or process which are equivalent to the elements expressed in the claims should also be considered. Accordingly, the doctrine of equivalents must be applied to the individual elements — not to the invention as a whole. This is to avert the possibility of expanding the patent scope beyond the elements of its claim(s).

Based on the foregoing, our laws and jurisprudence recognize the insubstantial difference test, triple identity test, and all elements test in determining equivalence under the doctrine of equivalents.

Phillips' Process

Records reveal that the first step in Phillips' process is the burning of sawdust at 250º to 400ºC. Second is the filtration step, where the resulting smoke passes through a series of filters to remove tar, odor, and other impurities. Third is the cooling of the filtered

smoke to ambient temperature in a plastic bladder. Then, the bladder is transported to the production area where the filtered smoke is transferred through a compressor and applied to the frozen tuna meat through an injector. **107** Hereafter, the records are conflicting.

Yamaoka and Lacap claimed that the "[t]he smoked fish products are then chilled for about twenty-four (24) hours at a temperature ranging from -2 degree to 1 degree Celsius at daytime and from -3 degree to 0 degree Celsius at nighttime." **108** Meanwhile, Phillips initially admitted in its answer that it simultaneously cools the smoke and tuna meat to 4ºC or 5ºC for 48 hours, *viz.*:

> 19. x x x In the next step, the filtered smoke is injected into small plastic bags each of which contains a piece of tuna. The **bags are then placed in a refrigerator having a maximum temperature of 4ºC. Cooling is performed for 48 hours**, after which the now cold-smoked, frozen tuna is vacuum package.
>
> xxx xxx xxx
>
> 21. x x x During the second stage, the smoke at ambient temperature is injected into plastic bags containing the tuna. **The plastic bags are then placed in refrigerator where the smoke and tuna are simultaneously cooled to a maximum temperature of 5ºC**. **109** (Emphasis supplied)

The ODG also noted this in its decision, which reads:

> In its "ANSWER," dated 27 May 2003, Phillips denied the allegations by Yamaoka and averred the following:
>
> xxx xxx xxx
>
> 3. Its process cools tar-filtered smoke before exposing it to tuna, but not to the super low temperature required by the claims of the patent as its process cools smoke into two stages: During the first stage, the smoke is cooled to ambient (room) temperature when it is placed in a rubber bladder, and during the second stage, the smoke at ambient temperature is injected into plastic bags containing the tuna, and the plastic bags are then placed in refrigerator where **the smoke and tuna are simultaneously cooled to a maximum temperature of 5ºC**. **110** (Emphasis supplied)

During the ocular inspection, the BLA observed that before exposing tuna meat to the ambient temperature filtered smoke, Phillips keeps the temperature of the tuna meat at 0º to 5ºC. Prof. Acevedo reported that keeping the meat at a low temperature is a mandatory requirement to prevent histamine formation beyond the level approved by regulatory agencies. **111** After exposing the meat to the ambient temperature filtered smoke, the temperature of the treated tuna meat remained at 5ºC:

> At this point, this Office believes that the omission of the third step [cooling of the filtered smoke in a cooling unit] has not yielded any different result. **As seen during the ocular inspection of respondent's process, filtered smoke at ambient temperature of 24ºC (Exhibit "6-E") after it was applied to tuna was immediately cooled. The temperature reading of smoke treated tuna was specifically at 0º to 5ºC (Exhibit "6-F")**. The cooling of filtered smoke to a temperature of 0º to 5ºC immediately after injection of ambient temperature filtered smoke to the tuna yields the same result in Steps 3 and 4. The elements of respondent's process achieve the same function and gives the same result.
>
> xxx xxx xxx

In the instant case, respondent burns materials, filters the smoke and **applies the filtered smoke to the tuna which is spontaneously cooled to 0º to 5ºC when refrigerated**. x x x **112**

x x x. The transcript of stenographic notes taken during the ocular inspection reveals:

(Back to the smoked section)

xxx xxx xxx

(Mr. Garay put the thermometer in the meat to show the temperature) It was 5. According to the application of Yamaoka patent yung smoke nila is -5. Ang sa atin between 22-30. **Ang sa chilling natin is 0 to -2**.

Atty. Montejo: **Ito treated na with smoke. It was 5º** (pointing to the temperature of the tuna meat which was already cured). **113**

Thereafter, the filtered smoke and tuna meat are placed in a refrigerator with a -3ºC setting. The BLA Decision, Prof. Acevedo's report, and ODG Decision provide:

a. *BLA Decision*: "At this stage, this Bureau observed that the **temperature reading on the tuna meat was 5ºC**. The **meat injected with filtered smoke was then stored in a refrigeration unit with a temperature setting of -3ºC**." **114**

"4. Plastic Madder is then transported to the production area where filtered smoke is transferred through a compressor and is applied to raw tuna meat through an injector. (Temperature of smoke is allegedly around 22ºC, while temperature of the meat is around 0º to 5ºC);

5. Tuna injected with filtered smoke at ambient temperature is **stored in a refrigeration unit with a temperature setting of -3ºC**. (TSN October 6, 2003)" **115**

b. *Teresita P. Acevedo's Report*: "Storage of injected tuna sealed in plastic bags containing CO gas by placing in chiller set at **-3ºC for 48 hours**." **116**

c. *ODG Decision*: "x x x the injection of filtered smoke in the raw tuna meat; and lastly, the **placing of the injected tuna into a refrigeration unit with a temperature setting of -3ºC**." **117**

To reconcile the inconsistencies in Phillips' claims, the Court is constrained to conclude that before the ocular inspection, Phillips cools the smoke and tuna meat in a refrigerator with a maximum temperature of 4ºC or 5ºC for 48 hours, but during the ocular inspection, the temperature setting was reduced to -3ºC.

In fine, Phillips process can be summarized as follows:

(a) Burning of sawdust at 250º to 400ºC;

(b) Filtering of the produced smoke to remove tar, odor, and other impurities;

(c) Cooling of the filtered smoke at an ambient temperature; and

(d) Exposing the frozen tuna meat to the filtered smoke by smoking and injection of the filtered smoke directly into the tuna meat.

(e) Cooling of tuna meat injected with ambient temperature filtered smoke to 4ºC or 5ºC before the ocular inspection and -3ºC during the ocular inspection.

Phillips' process does not fall within the scope of Patent I-31138

TPI harps on the CA and IPO's disregard of the evidence establishing patent infringement presented during the TRO and WPI hearings. It argues that Lacap's categorical, precise, and detailed description of the pre-cooling unit and its previous location during the ocular inspection established the existence of the pre-cooling unit, at least until the ocular inspection, and even if Phillips did not use a cooling unit, the pre-cooling step in Claim 1 can still be read in Phillips' process because both processes cool the filtered smoke before curing. **118**

TPI's argument is untenable.

The Court recognizes the limitations of conducting ocular inspections in infringement cases. In most cases, the infringing product or equipment used in infringing patented process can easily be removed before the proper authorities could inspect the accused premises. This is basically the reason why the patentee's evidence must be substantial to convince the courts and the proper authorities that there is patent infringement even if there is no ocular inspection or if the ocular inspection is unavailing in establishing the patentee's case. This is where TPI's evidence fell short.

TPI's evidence consists primarily of Yamaoka's testimony to prove his ownership of Patent I-31138, Lacap's testimony to prove that Phillips used a cooling unit to pre-cool the filtered smoke to between 0º and 5ºC, **119** and Jorge Cesar Sandiego's testimony to prove patent infringement. Lacap's testimony is crucial in proving the existence of the cooling unit in Phillips' plant. He presented a detailed description of the work involved in Phillips' process, **120** the landscape of the work area, **121** and a sketch of the smoke machine's location in Phillips' plant **122** to support his claims. However, these pieces of evidence are insubstantial to prove the existence of the cooling unit. At any rate, even if we consider Lacap's testimony sufficient to prove the existence of a cooling unit, there is no supporting evidence showing that the cooling unit cools the filtered smoke to between 0º and 5ºC.

In the circumstances, the Court cannot agree with TPI that the existence of the pre-cooling unit that cools the filtered smoke to between 0º and 5ºC was established in this case. The Court now proceeds to determine the existence of patent infringement.

a. There is no literal infringement

As discussed, the inventive step of Patent I-31138 is the use of filtered smoke cooled to between 0º and 5ºC in smoking tuna meat. A comparison between the elements of Claim 1 and Phillips process shows that this inventive step is absent.

PATENT I-31138	**PHILLIPS' PROCESS**
(a) Burning of smoking material at 250º to 400ºC;	(a) Burning of sawdust at 250º to 400ºC;
(b) Filtering of the produced smoke to remove mainly tar;	(b) Filtering of the produced smoke to remove tar, odor, and other impurities;
(c) Cooling of the filtered smoke in a **cooling unit to a temperature between 0º and 5ºC** while retaining **ingredients exerting highly preservative and sterilizing effects**; and	(c) Cooling of the **filtered smoke at an ambient temperature**; and

(d) **Smoking of tuna meat by exposing it to the filtered smoke cooled to between 0º and 5ºC**.	(d) **Exposing the frozen tuna meat to the filtered smoke by smoking and injection** of the filtered smoke directly into the tuna meat. **(e) Cooling** of tuna meat injected with ambient temperature filtered smoke **to 4ºC to 5ºC before the ocular inspection or -3ºC during the ocular inspection**.

The first two steps in Phillips' process can be read in Patent I-31138's Claim 1. However, subsequent steps in Phillips' process differ from the last two steps in Patent I-31138. The elements of cooling the filtered smoke to 0º and 5ºC in a cooling unit before applying it to the tuna meat are absent. Verily, Phillips' process does not fall within the literal meaning of Patent I-31138's Claim 1. The CA correctly ruled that there is no literal infringement.

b. There is no infringement under the doctrine of equivalents

The issue for the Court's resolution is whether the simultaneous cooling of the filtered smoke and tuna meat in Phillips' process is equivalent to Patent I-31138's pre-cooling of the filtered smoke in a cooling unit.

The Court rules in the negative. TPI failed to establish that the simultaneous cooling of the filtered smoke and tuna meat will cure tuna meat in substantially the same way as the pre-cooled filtered smoke. The eventual cooling of the filtered smoke in Phillips' process does not *ipso facto* indicate similarities in the effect of the smoke on tuna meat.

Smoking is the traditional process of treating fish by exposing it to smoke or smoke concentrates produced from burning or smoldering plant materials. **123** The smoke can either be cold or hot. In cold smoking, the smoking is done at an appropriate time and temperature to prevent the coagulation of fish proteins. On the other hand, hot smoking is done at temperatures high enough, and for a specific time, to allow the coagulation of the protein. **124** The fish used can be fresh, chilled, or frozen as long as the histamine content of the product should not be more than 200 ppm. **125**

In her report, Prof. Acevedo explained that the smoke used in curing meat is composed of carbon dioxide (CO_2), carbon monoxide (CO), nitrogen dioxide (NO_2), nitrogen monoxide (NO), and monoaromatic phenols. These compounds all have preservative effects on meat. Particularly, CO, NO_2, and NO prevent the decomposition of meat, while phenols serve as bacterial inhibitors. **126** The curing of meat products takes place where a complex chemical reaction occurs between the tuna meat and the filtered smoke, particularly, the myoglobin of the meat (red pigment of the muscle which is similar to the red pigment of blood), hemoglobin of the blood, and the oxides of the CO, NO_2, and NO gases. **127** Simply put, the curing of meat occurs when the compounds in the filtered smoke bind with the myoglobin and hemoglobin in the tuna meat, forming a complex molecule, *e.g.*, carboxy-myoglobin, oxymyoglobin, which produces the stable freshness organoleptic characteristics and red color of cured meat. The rate of this chemical reaction depends on the concentration of the gases or the myoglobin and hemoglobin in the meat and the reaction temperature. Therefore, the higher the temperature of the reaction, the faster the rate of reaction. **128**

It can be inferred from the report of Prof. Acevedo that the temperature of the filtered smoke plays an important role in the rate of the chemical reaction between the compounds in the smoke and the proteins (myoglobin and hemoglobin) in the tuna meat.

All things being equal, the rate of the chemical reaction and the time required to cure the tuna meat in Phillips' process is faster than in Patent I-31138. This explains why Phillips' smoking process immediately ends upon the exposure of the tuna meat to the ambient temperature filtered smoke. On the other hand, the smoking process in Patent I-31138 takes several hours to finish. Lines 5 to 8 of the *Summary of Invention* provide that the smoking is done for about 8 hours when the meat is cut into thin, bite-sized slices and about 24 hours when it is cut into larger slices, approximately 3cm thick.

To recall, the principle behind Patent I-31138 is the use of filtered smoke cooled to between 0º and 5ºC in smoking tuna meat because, within that temperature range, the smoke has maximum sterilizing effects. At the same time, the decomposition and discoloration-preventing effects are obtainable. Following this principle and Prof. Acevedo's report means that tuna meat is exposed to the ambient room temperature filtered smoke, it reacts to filtered smoke that does not have the same sterilizing and preservative effects as that of the pre-cooled smoked. It is incumbent upon TPI to prove that these maximum effects would eventually be reached by the ambient temperature filtered smoke once cooled to between 0º and 5ºC even if the chemical reaction already took place or the ambient temperature filtered smoke reached its maximum effects before the curing process starts. TPI miserably failed in this regard.

Absent any evidence that the ambient temperature filtered smoke cools down to between 0º and 5ºC before the chemical reaction takes place, and it retains the ingredients which exert the same highly preservative and sterilizing effects, the Court is constrained to rule that the simultaneous cooling of the smoke and the meat is not equivalent to Patent I-31138's pre-cooling of the filtered smoke.

In these circumstances, the tests of equivalency that would warrant the finding of patent infringement under the doctrine of equivalents were not satisfied. The **insubstantial difference test** requires that the changes introduced by the accused or defendant are insubstantial, while the **triple identity test** or **function-means-result test** will only be satisfied if both processes perform substantially the same functions and accomplish substantially the same result of curing tuna meat by using substantially the same means. Here, the function and result of the processes are substantially the same, but the means used by the parties to cure the tuna meat are different. Phillips' use of ambient temperature filtered smoke is a substantial change because Patent I-31138 does not cover the use of filtered smoke with a temperature above 5ºC. As discussed, the use of reactants with higher temperatures speeds up the rate of reaction, and eventually the curing process. More, no evidence was presented to prove that the simultaneous cooling of the filtered smoke and meat will produce the same high preservative and sterilizing effects as that of pre-cooling filtered smoke. The quality of the preservative and sterilizing effects are relevant because Patent I-31138's innovative concept is to achieve the maximum quality of filtered smoke by cooling it to between 0ºC and 5ºC. Hence, the means used in Phillips' process are not substantially the same as that in Patent I-31138.

At this juncture, we stress that in examining the differences between two processes or devices, the deciding authorities should bear in mind that the changes introduced in the patented process or device have to be substantial to remove the allegedly-infringing process or device from the scope of patent protection. To illustrate, the number of filters used and the manner of exposing the tuna meat to the filtered smoke may have changed the resulting product in this case, but Patent I-31138 does not claim the specific number of filters or the manner of exposing the tuna meat to the filtered smoke. As a result, these changes are still within the scope of Patent I-31138.

Finally, an examination of Phillips' process *vis-à-vis* Patent I-31138's elements would show that the **all elements test** was not satisfied. The equivalents of all the elements in Patent I-31138 are not present in Phillips process. As mentioned, the four elements are: (a) burning of the smoking material at 250º to 400ºC; (b) filtering of the

produced smoke to remove mainly tar; (c) cooling of the filtered smoke in a cooling unit to a temperature between 0º and 5ºC while retaining ingredients exerting highly preservative and sterilizing effects; and (d) smoking of tuna meat by exposing it to the filtered smoke cooled to between 0º and 5ºC. Unquestionably, the first two steps in Phillips' process and the two elements in Claim 1 of Patent I-31138 are identical. As regards the last two elements, TPI's evidence is insufficient to establish that the eventual cooling of the ambient temperature filtered smoke retained the ingredients which exert the same highly preservative and sterilizing effects. Similarly, there is no evidence proving that the ambient temperature filtered smoke cures the tuna meat in the same way as when the tuna meat is exposed to a filtered smoke already cooled to between 0º and 5ºC. Thus, the last two elements of Patent I-31138 are not equivalent to the simultaneous cooling of the ambient temperature filtered smoke and tuna meat.

In all, TPI and its predecessors-in-interest failed to discharge their burden of proving that Phillips appropriated the innovative concept of Patent I-31138. The evidence on record is insufficient to establish that Phillips' process cures the tuna meat in substantially the same way as Patent I-31138.

ACCORDINGLY, the Petition for Review on *Certiorari* is **GRANTED**. The Court of Appeals' Amended Decision dated February 28, 2014 and Resolution dated August 29, 2014 in CA-G.R. SP No. 121498 are **REVERSED**. The Court of Appeals' Decision dated June 25, 2013 is **REINSTATED**.

SO ORDERED.

Leonen, J.Y. Lopez and *Kho, Jr., JJ.*, concur.

Lazaro-Javier, J., with concurrence.

Separate Opinions

LAZARO-JAVIER, *J., concurrence*:

I **concur** with Justice Mario V. Lopez on his *ponencia* to grant the present Petition. I humbly opine, as the *ponencia* does, that there was no patent infringement committed by petitioner Phillips Seafood Philippines Corporation of Patent No. I-31138 entitled *"Method for Curing Fish and Meat by Extra Low Temperature Smoking"* owned by respondent Tuna Processors, Inc.

Antecedents

Respondent's predecessor-in-interest Kanemitsu Yamaoka (Yamaoka) is one of the patentees of Philippine Patent No. I-31138. The independent claim of Patent No. I-31138 is the process of curing tuna meat by exposing it to filtered smoke cooled in a cooling unit to between 0º and 5ºC, while retaining ingredients exerting highly preservative and sterilizing effects.

On May 5, 2003, Yamaoka filed an administrative complaint for patent infringement and preliminary injunction with prayer for the issuance of a temporary restraining order against petitioner before the Intellectual Property Office's (IPO) Bureau of Legal Affairs. He alleged that petitioner appropriated their patented process in curing its tuna products. Petitioner denied infringing Patent No. I-31138 as its process does not require a cooling unit because the filtered smoke is only allowed to cool to ambient temperature before it is injected directly into the tuna meat.

The Bureau of Legal Affairs dismissed Yamaoka's complaint for patent infringement, holding that petitioner's process does not fall within the scope of Patent I-31138. Meanwhile, respondent substituted Yamaoka pending the latter's appeal before the IPO's Office of the Director General. The substitution became necessary in view of the supervening death of Yamaoka. The Office of the Director General eventually dismissed the appeal, which was initially affirmed by the Court of Appeals.

On February 28, 2014, however, the Court of Appeals amended its initial ruling and ordained that there was an infringement under the doctrine of equivalents because both processes involve the burning of combustible material to produce smoke, filtration of the smoke, cooling of filtered smoke before curing, and curing the tuna meat with cold filtered smoke. Therefore, petitioner was found liable for patent infringement.

Reasons for Concurrence

There was no literal infringement committed by petitioner

In using literal infringement as test, resort must be had to the words of the claim. If the accused matter clearly falls within the claim, infringement is established. To determine whether the particular item falls within the literal meaning of the patent claims, the Court must **juxtapose** the claims of the patent and the accused product to determine **whether there is exact identity** of all material elements. 1

As illustrated by the *ponencia* via the table below, there is **no exact identity** of **all** material elements between petitioner's and respondent's tuna curing processes. Only the first two steps are identical while the rest are markedly different, *viz.*: 2

PATENT I-31138	PETITIONER'S PROCESS
Step 1: Burning of smoking material at 250º to 400ºC.	**Step 1:** Burning of sawdust at 250º to 400ºC.
Step 2: Filtering of the produced smoke to remove mainly tar.	**Step 2:** Filtering of the produced smoke to remove tar, odor, and other impurities.
Step 3: Cooling of the filtered smoke in a cooling unit to a temperature **between 0º and 5ºC** while retaining ingredients exerting highly preservative and sterilizing effects.	**Step 3: Cooling of the filtered smoke** at an **ambient temperature**.
Step 4: Smoking of tuna meat **by exposing it to the filtered smoke** cooled to between 0º and 5ºC.	**Step 4:** Exposing the frozen tuna meat to the filtered smoke **by smoking and injection of the filtered smoke directly into the tuna meat**.
	Step 5: Cooling of the tuna meat injected with ambient temperature filtered smoke to **4ºC to 5ºC** before the ocular inspection **or -3ºC** during the ocular inspection.

There is no infringement under the Doctrine of Equivalents

The doctrine of equivalents states that an infringement also occurs when a device appropriates a prior invention by **incorporating its innovative concept** and, despite some modification and change, performs **substantially the same function** in **substantially the same way** to achieve **substantially the same result**. 3 Applying the doctrine, it is clear that the assailed device: (a) appropriates the

prior invention by incorporating its innovative concept; and (b) it performs substantially the same function, in the same way, with the same result.

To recall, here, the innovative step claimed by Patent No. I-31138 is the unique process of curing tuna meat by exposing it to filtered smoke cooled in a cooling unit to between 0º and 5ºC. Respondent duly explained in the patent's *Summary of Invention* that this innovative step is employed to achieve maximum sterilizing, and decomposition and discoloration-preventing effects.

Notably, however, this innovative step is absent from petitioner's process. For while the innovative step uniquely requires the filtered smoke to be cooled specifically to between 0º and 5ºC, petitioner's process only cools the filtered smoke to ambient temperature (around 24ºC). Verily, it cannot be said that the two cooling steps are the same.

Neither was it established that petitioner's process, which injects the filtered smoke into the tuna **then** simultaneously cools the tuna meat and smoke to 4ºC to 5ºC then -3ºC, performs substantially the same functions in substantially the same way to achieve substantially the same result as respondent's process. Relying on the Report of the technical expert Professor Teresita P. Acevedo, the *ponencia* explicated that the curing process occurs when the compounds in the filtered smoke **bind** with the myoglobin and hemoglobin of the tuna meat.

There was no evidence adduced, however, that the simultaneous cooling of the filtered smoke and tuna meat **after** the smoke had already been injected directly into the tuna meat (petitioner's process) achieves substantially the same result and performs substantially the same functions as when the filtered smoke was cooled **before** it is applied to the tuna meat (respondent's process).

ACCORDINGLY, I vote to **GRANT** the Petition and **REINSTATE** the Decision dated June 25, 2013 of the Court of Appeals.

Footnotes

1. *See* INTELLECTUAL PROPERTY CODE, Sec. 2.
2. INTELLECTUAL PROPERTY CODE, Sec. 71.
3. INTELLECTUAL PROPERTY CODE, Sec. 75.
4. *Rollo*, pp. 58-78. Penned by Associate Justice Romeo F. Barza, with the concurrence Associate Justices Noel G. Tijam (retired Member of this Court) and Ramon A. Cruz.
5. *Rollo*, pp. 81-82. Penned by Associate Justice Romeo F. Barza, with the concurrence of Associate Justices Noel G. Tijam and Ramon A. Cruz.
6. *See rollo*, pp. 320-336.
7. *Id.* at 111.
8. *Id.* at 10.
9. *Id.* at 327.
10. *Id.* at 110-119.
11. *Id.* at 83 & 127.
12. *Id.* at 110.
13. *Id.* at 297; CA *rollo*, p. 95.

14. CA *rollo*, p. 95.
15. *Rollo*, pp. 155-156; 160-161.
16. *Id.* at 165.
17. *Id.* at 125.
18. *Id.* at 294.
19. CA *rollo*, pp. 130-131 & 224-225.
20. *Rollo*, p. 295.
21. *Id.* at 303.
22. CA *rollo*, p. 130.
23. *Id.* at 130.
24. *Id.* at 104.
25. *Id.* at 106-117.
26. *Id.* at 127-133.
27. *Id.* at 130.
28. *Id.* at 135-136.
29. *Id.* at 138-152.
30. *Rollo*, p. 296.
31. *Id.* at 294-306.
32. *Id.* at 302.
33. *Id.* at 303.
34. *Id.* at 306.
35. *Id.* at 325.
36. CA *rollo*, pp. 315-316.
37. *Rollo*, pp. 308-319.
38. *Id.* at 312-319.
39. *Id.* at 327.
40. *Id.* at 336. The dispositive portion of the Decision reads:

    > Wherefore, premises considered, the appeal is hereby DISMISSED and Decision No. 2006-06 of the Director of the Bureau of Legal Affairs is hereby AFFIRMED. Let a copy of this Decision and the records of this case be furnished and returned to the Director of Bureau of Legal Affairs for appropriate action. Further, let also the Director of the Bureau of Patents and the library of the Documentation, Information and Technology Transfer Bureau be furnished a copy of this Decision for information, guidance, and record purposes.
    >
    > SO ORDERED.

41. *Id.* at 321-336.
42. *Id.* at 329.

43. *Id.* at 329.

44. *Id.* at 330.

45. *Id.* at 329.

46. *Id.* at 330-331.

47. CA *rollo*, pp. 12-53.

48. *Id.* at 27 & 38.

49. *Rollo*, pp. 339-360. Penned by Associate Justice Romeo F. Barza, with the concurrence of Associate Justices Noel G. Tijam (retired Member of this Court) and Ramon A. Cruz. The dispositive portion of the Decision reads:

    WHEREFORE, the petition is hereby DISMISSED and the assailed Decision, dated September 12, 2011, of the Office of the Director General of the Intellectual Property Office, in Appeal No. 10-06-03, is AFFIRMED *in toto*.

    SO ORDERED.

50. *Id.* at 353-354.

51. *Id.* at 357-359.

52. *See Id.* at 18.

53. *Id.* at 72.

54. *Id.* at 73-74.

55. *Id.* at 77.

56. *Id.* at 81-82. Resolution penned by Associate Justice Romeo F. Barza, with the concurrence of Associate Justices Noel G. Tijam (former Member of this Court) and Ramon A. Cruz.

57. INTELLECTUAL PROPERTY CODE, Sec. 21.

58. Revised Implementing Rules and Regulations for Patents, Utility Models, and Industrial Designs, Rule 400.

59. INTELLECTUAL PROPERTY CODE, Secs. 71 & 76.

60. *Cognex Corp. v. Electro Scientific Industries*, 214 F. Supp. 2d 110 (D. Mass. 2022) and *Nilsen v. Motorola, Inc.*, 80 F. Supp. 2d 921 (N.D. III.2000); *citing Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996).

61. INTELLECTUAL PROPERTY CODE, Sec. 53.

62. INTELLECTUAL PROPERTY CODE, Sec. 35.

63. *Background Reading Material on the Intellectual Property System of the Philippines*, World Intellectual Property Organization, October 1993, p. 55. Accessed from https://www.wipo.int/edocs/pubdocs/en/wipo_pub_686_ph.pdf.

64. Revised Implementing Rules and Regulations for Patents, Utility Models, and Industrial Designs. Rule 413 (a).

65. *Warner-Jenkinson Co., Inc. v. Hilton Davis Chemical Co.*, 520 U.S. 17 (1997) and Intellectual Property Code, Sections 36 & 75.

66. *See* INTELLECTUAL PROPERTY CODE, Secs. 36 & 75; Revised Implementing Rules and Regulations for Patents, Utility Models, and Industrial Designs. Rule 415 (a):

Rule 415. Claims —

(a) The patent application must conclude with a claim, particularly pointing out and distinctly claiming the part, improvement, or combination which the applicant regards as his invention.

67. *2017 Manual for Patent Examination Procedure*, Rule 415 (b).

68. *See* Revised Implementing Rules and Regulations for Patents, Utility Models, and Industrial Designs. Rules 415 (b) and 416:

Rule 415. Claims —

(b) The application may contain one (1) or more independent claims in the same category (product, process, apparatus, or use), where it is not appropriate, having regard to the subject matter of the application, to cover this subject matter by a single claim which shall define the matter for which the protection is sought. Each claim shall be clear, concise, and supported by the description.

Rule 416. *Form and Contents of the Claims*. — The claim shall define the matter for which the protection is sought in terms of technical features of the invention.

69. *2017 Manual for Patent Examination Procedure*, Rule 415 (b) (c).

70. *See* Revised Implementing Rules and Regulations for Patents, Utility Models, and Industrial Designs. Rule 415 (c):

Rule 415. Claims —

xxx xxx xxx

(c) One (1) or more claims may be presented in dependent form, referring back and further limiting another claim(s) in the same application for. An dependent claim which refers to more than one other claim (multiple dependent claim) shall refer to such other claims in the alternative only. A multiple dependent claim shall not serve as a basis for any other multiple dependent claim.

71. *2017 Manual for Patent Examination Procedure*, Rule 415 (c).

72. *Teledyne McCormick Selph v. United States*, 558 F.2d 1000, 1004 (Fed. Cir. 1977); *In re* Schutte, 244 F.2d 323, 44 CCPA 922 (1957) cited in *Dresser Industries, Inc. v. United States*, 432 F.2d 787, 193 Ct. Cl. 140 (Fed. Cir. 1970), *Mallinckrodt, Inc. v. Masimo Corp.*, 292 F. Supp. 2d 1201 (C.D. Cal. 2003).

73. *See Mallinckrodt, Inc. v. Masimo Corp.*, 292 F. Supp. 2d 1201 (C.D. Cal. 2003) *Wahpeton Canvas Company, Inc. v. Frontier, Inc.*, 870F.2d 1546 (Fed. Circ. 1989). (Footnote 10).

74. 456 Phil. 213 (2003) [Per J. Carpio, Third Division].

75. *Id.* at 223.

76. *See* INTELLECTUAL PROPERTY CODE, Sec. 75. *Extent of Protection and Interpretation of Claims*. — 75.1. The extent of protection conferred by a patent shall be determined by the claims, which are to be interpreted in the light of the description and drawings.

xxx xxx xxx

and the Revised Implementing Rules and Regulations for Patents, Utility Models, and Industrial Designs.

Rule 415 (d):

Rule 415. Claims —

xxx xxx xxx

(d) The claims must conform to the invention as set forth in the description and the terms and phrases used in the claims must find clear support or antecedent basis in the said description so that the meaning of the terms may be ascertainable by reference to the description. Claims shall not, except where absolutely necessary, rely in respect of the technical features of the invention, on reference to the description or drawings. In particular, they shall not rely on references such as, "As described in part x x x of the description" or "As illustrated in figure x x x of the drawings."

77. *Rollo*, p. 106.

78. *Id.* at 90.

79. *Id.* at 91.

80. *Id.* at 93-94.

81. *Id.* at 304 & 329.

82. *Id.* at 74.

83. *Cabral v. Adolfo*, 794 Phil. 161, 172 (2016) [Per J. Reyes, Third Division]; *citing Jose v. Novida*, 738 Phil. 99, 120 (2014) [Per J. Del Castillo, Second Division]; *citing Sugar Regulatory Administration v. Tormon, et al.*, 700 Phil. 165, 178 (2012) [Per J. Peralta, *En Banc*].

84. *Rollo*, p. 96.

85. *Id.* at 97.

86. *Id.* at 92.

87. *Id.* at 313-314.

88. *Rules on Evidence*, Rule 113, Section 6. *Substantial evidence*. — In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion; *Rules & Regulations on Administrative Complaints for Violation of Laws Involving Intellectual Property Rights*, Rule 10, Section 1. *Evidence required*. — Substantial evidence shall be sufficient to support a decision or order. A fact may be deemed established if it is supported by substantial evidence. It means such relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. The Bureau shall allow the presentation or submission of forensic evidence which may be admitted and given weight.

89. *Vargas v. F.M. Yaptico Co. Ltd.*, 40 Phil. 195, 199-200 (1919) [Per J. Malcolm, *En Banc*].

90. INTELLECTUAL PROPERTY CODE, Sec. 78.

91. *Rollo*, p. 90.

92. 297 Phil. 375 (1993) [Per J. Romero, Third Division].

93. *Id.* at 380-382.

94. *Id.* at 380.

95. *Id.* at 380-381.

96. *Id.* at 381.

97. *Id.* at 381-382.

98. 12 Phil. 519 (1909) [Per J. Carson, *En Banc*].

99. *Id.*

100. 325 Phil. 424 (1996) [Per J. Bellosillo, First Division].

101. *Id.* at 441-442.

102. 456 Phil. 213 (2003) [Per J. Carpio-Morales, Third Division].

103. *Id.* at 224-225.

104. 520 U.S. 17 (1997).

105. *Id.*

106. *Id.*

107. *Rollo*, pp. 160, 298, & 329.

108. CA *rollo*, pp. 95 & 225.

109. *Rollo*, pp. 160-161.

110. *Id.* at 323.

111. CA *rollo*, p. 341.

112. *Id.* at 130. *BLA Resolution No. 2004-03*.

113. *Id.* at 160-161. *BLA Resolution No. 2004-14*.

114. *Rollo*, p. 298.

115. *Id.* at 302.

116. *Id.* at 310-311; CA *rollo*, pp. 334-335.

117. *Id.* at 329.

118. *Id.* at 435-437.

119. *Id.* at 297.

120. CA *rollo*, p. 188.

121. *Id.* at 190.

122. *Id.* at 194.

123. Philippine National Standard/Food and Drug Administration 26:2010. Section 3.18.

124. Philippine National Standard/Food and Drug Administration 26:2010. Sections 3.1 & 3.8; Sections 4.3.2-4.3.1.

125. Philippine National Standard/Food and Drug Administration 26:2010. Sections 5.1.1.1 & 5.2.1.1.

126. CA *rollo*, pp. 337-338.

127. *Id.* at 339.

128. *Id.* at 340.

LAZARO-JAVIER, J., concurrence:

1. See *Godines v. CA*, 297 Phil. 375, 380 (1993).

2. *Ponencia*, p. 26.

3. *Supra*, note 1.