COMMENTS

PATENT LAW: POWERS OF THE DIRECTOR OF PATENTS AND NATURE OF ASSIGNABLE INTEREST

A. Organization of the Patent Office.

Prior to July 4, 1946, if any person in the Philippines desired patent protection within Philippine territory for his invention or design, he had first to apply for a patent in the U.S. Patent Office.[1] If the U.S. Patent Office gave him a patent, then, under the provisions of the old Philippine patent law,[2] he had to file a certified copy of his U.S. Patent with the Philippine Bureau of Commerce. This Bureau issued to him a certificate of registration covering said certified copy. The filing in the Bureau of Commerce of the certified copy of the patent gave the owner of the patent, within Philippine territory, the same protection for his invention or design that the United States Patent Laws gave him within the territory of the United States.[3]

In 1947, the Congress of the Philippines enacted a Patent Act repealing the former law on the subject.[4] The new legislation, however, recognized all patent rights already acquired under the old law[5] and established an independent patent system for the Philippines with the creation of a Patent Office[6] under the administrative supervision of the Secretary of Justice.[7] On October 4, 1947, the late President Roxas issued an executive order[8] reorganizing the offices of the Executive Department of the Government. It created a new department—the Department of Commerce and Industry—and to this department the Patent Office was transferred.

B. Powers of the Director of Patents.

1. *General Nature of the Powers Granted.* It is an established and recognized principle in the United States, after whose patent law our statute was patterned, that the functions of the Commissioner of Patents are quasi-judicial in nature.[9] Of similar nature

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[1] First Annual Report of the Director of the Philippines Patent Office, (Aug. 21, 1947-June 30, 1948), p. 1.

[2] Act 2235, in effect, made the U.S. Patent Laws applicable in the Philippine Islands. *Vargas v. F. M. Yaptico,* 40 Phil. 195, (1919).

[3] Act No. 2235, Sec. 1.

[4] Rep. Act No. 165, Sec. 80 of which repeals Act No. 2235.

[5] *Ibid.,* Sec. 81.

[6] *Ibid.,* Sec. 1. The Patent Office is also given jurisdiction over the registration of trademarks, tradenames, and other marks. (Sec. 1, Rep. Act No. 166). It likewise, took over the functions relating to the registration of copyrights. (Sec. 1, Rep. Act No. 167).

[7] *Ibid.,* Sec. 1.

[8] Executive Order No. 94, promulgated under Rep. Act No. 51.

[9] "That it was intended that the Commissioner of Patents, in issuing or withholding patents, in reissues, interferences and extensions, should exercise quasi-judicial

are the functions of the Director of Patents in the Philippines. This is deducible from the powers vested in him by law. He has to consider all applications submitted and act as judge to determine and decide disputed questions of fact and of law. In so doing, he has to exercise discretion and to apply his legal as well as technological knowledge. This, however, is not the exercise of *judicial* power for it has been held that the mere power to ascertain or determine facts [10] or questions of law [11] incident to the exercise of administrative functions is not essentially judicial and may be vested in executive officers or bodies.

The decisions of the Director of Patents are subject to judicial review. Final decisions of the Director of Patents which may be subject to review by the Supreme Court [12] may arise either from applications unopposed by third parties, referred to as *ex parte* cases or from applications, registrations or patent grants contested by third parties, referred to as *inter partes* cases.[13]

Proceedings for the grant of patents for inventions and designs are *ex parte* throughout. No opposition to the grant of a patent is permitted.[14] It is like a lawsuit in which there is a plaintiff, but no defendant, the court itself acting as the adverse party.[15] It is a contest between the Examiner and the Director on the one hand, representing the public and trying to give the inventor or designer the least possible monopoly in return for his disclosure and the applicant or his attorney on the other hand, trying to get as much monopoly as possible.[16] *Inter partes* proceedings are those involving the cancellation of a patent,[17] compulsory licensing of a patent,[18] and interference between two patent applications or between an application and a patent.[19]

The Director exercises original jurisdiction over contested or *inter partes* cases while in *ex parte* cases the applications are passed upon, in the first instance, by the Examiners of the Patent Office,

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functions, is apparent from the nature of the examination and decisions he is required to make, and the modes provided by law, according to which, exclusively, they may be reviewed." *Butterworth v. U. S. Hoe*, 112 U.S. 50, 67.

[10] See *Sullivan v. Union Stockyards Co. of Omaha*, (CCA, Neb.), 22 Fed. 2d 60, 61; *U. S. v. Sugar* (D.C., Mich.), 243 F. 423, affirming *Sugar v. U. S.*, 252 F. 79; *People v. Bird*, 300 F. 23, 212 Cal. 632; *State v. Jacksonville Terminal Co.*, 106 So. 576, 90 Fla. 721; *In Re Consolidated Freight Co.*, 251 N.W. 431, 432.

[11] See *Robinson v. Kerrigan*, 151 Cal. 40.

[12] Rep. Act No. 165, Sec. 61.

[13] Second Annual Report of the Director of Patents, Fiscal Year Ended June 30, 1949, p. 15.

[14] Rep. Act No. 165, Secs. 16 and 18.

[15] Second Annual Report of the Director of Patents, Fiscal Year Ended June 30, 1949, Appendix, p. 6.

[16] *Ibid.*

[17] Rep. Act No. 165, Secs. 28-33.

[18] id., Secs. 34-36.

[19] Second Annual Report of the Director of Patents, Fiscal Year Ended June 30, 1949, p. 17.

whose decisions are subject to review by the Director.[20] Appeals from the decisions of the Director in both cases should be taken within a period of thirty days from notice of the decision.[21]

2. *Specific Powers.* Under the Patent Law now in force, the Director of Patents is authorized to grant to inventors, their heirs, legal representatives, or assigns, letters patent for any new [22] and useful [23] invention embodied in a machine, a manufactured product or substance, a process, or in any improvement of any of the foregoing.[24] He is also authorized to grant to designers, their heirs, legal representatives, or assigns, letters patent for any new [25] and original [26] creation relating to the features of shape, pattern, configuration, ornamentation, or artistic appearance of an article of commerce.[27] However, officers and employees of the Patent Office, during the term of their employment and for a period of one year thereafter, are disqualified from acquiring patents and design registrations or any right, title, or interest therein, except by hereditary succession.[28]

Likewise, the Director is authorized to grant, upon petition and upon the grounds fixed by the law, compulsory licenses for the use of a patent by others,[29] and to fix the terms and conditions of the license in default of agreement between the patentee and the petitioner.[30]

When an application for patent has been filed, the Director shall make a formal examination [31] to determine whether the require-

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[20] *Ibid.*, pp. 15, 16.

[21] Rep. Act No. 165, Sec. 63.

[22] id., Sec. 9. Rules of Practice in the Philippines Patent Office, Rule 24, These rules were promulgated under the authority of Sec. 78 of Rep. Act No. 165.

[23] id., Sec. 8. id., Rule 23.

[24] id., Secs. 7 and 10. id., Rules 22 and 26.

[25] id., Secs. 9 and 56. id., Rules 24 and 73.

[26] A design is said to be original, if its creation involved the use of the creative faculty, and it is not imitative of any design previously made or known. First Annual Report of the Director of Patents, p. 9.

[27] Rep. Act No. 165, Secs. 10 and 55. Rules of Practice, Rules 26 and 72.

[28] id., Sec. 77.

[29] id., Sec. 34. Rules of Practice, Rule 110.

[30] id., Sec. 36. id., Rule 113.

[31] id., Sec. 16. id., Rules 55, 56, 57.

Applications filed in the Patent Office are classified according to the various arts, and are taken up for examination in regular order of filing, those in the same class of invention being examined and disposed of, so far as practicable, in the order in which the respective applications have been completed.

The following cases have preference over all other cases at every period of their examination in the order enumerated: (a) Applications wherein the inventions are deemed of peculiar importance to some branch of the public service, and when for that reason, the Head of some Department of the Government requests immediate action and the Director so orders; but in this case it shall be the duty of the Head of that Department to be represented before the Director in order to prevent the improper issue of a patent; (b) Cases which may be remanded by an appellate tribunal

ments [32] have been complied with. This is known as the United States system of subjecting patent applications to examination as distinguished from the French system of "refuse no patent" to any applicant and grant all patents applied for, leaving to future litigation the determination of whether the grant of any patent was proper or not.[33] If the application is defective in any respect, the applicant shall be notified of the specific defects and a time fixed, not less than four months, within which such defects may be remedied. In this connection, the question may be posed: is the examination provided for by law one as to merit or only as to form, or both? In other words, if the Director could show, as a result of his investigation, that the invention was not patentable,[34] could he be compelled to issue the patent if the application fully complies with all the formal requirements? Certain sections of the law [35] seem to say that he may. However, it is submitted that he cannot be compelled, for to hold otherwise would be to negate the very purpose of the statute and would require the Director to do something which is clearly forbidden by the law. The examination, therefore, must be an examination both as to merit and as to form.[36] This view is

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for further action; (c) Applications which appear to interfere with other applications previously considered and found to be allowable.

[32] id., Secs. 13 and 14. id., Rules 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43.

[33] Second Annual Report of the Director of Patents, Fiscal Year Ended June 30, 1949, Appendix, p. 2.

[34] Rep. Act No. 165, Secs. 8-9.

[35] id., Secs. 16-18.

[36] In examining a patent application, the following points are considered:

Formal

(a) Do the several parts of the application conform to the formal and legal requirements of the Rules of Practice?

(b) Are the Specification and the Drawing sufficiently clear to be understood and followed correctly by persons possessing ordinary skill in the art to which the invention belongs?

(c) Has the inventor hidden some vital fact or step so that, after the patent (if granted) has expired, persons possessing ordinary skill in the art will not be able to practice the invention by just following the Specifications? In other words, has the inventor made a full disclosure of his invention?

Merit

(a) Is the invention really an invention in the sense of the patent law? If it is not an invention in this sense, then the inventor is not entitled to patent protection. This is an important question, for one of the usual defenses put up by an infringer, when he is sued, is that the invention is not a patentable invention and that, therefore, the patent granted is void. The determination of this question is a joint job for the Engineer-Examiner and the Law Examiner, and the question has to be decided in accordance with American jurisprudence, as it is the practice of our courts to follow that jurisprudence in almost all matters.

(b) Is the invention new or novel in the sense of the patent law? On this point the Examiner makes the following inquiries:

1. Was the invention already known or used by others in the Philippines before the date on which the applicant alleges to have invented it? If so, then

sustained by the Rules of Practice in the Philippine Patent Office, which contains provisions for examination as to patentability.[37]

Upon the filing of a petition for cancellation of a patent on any of the grounds specified by law,[38] the Director shall forthwith serve notice to all interested parties.[39] If he finds that a case for cancellation has been made out, he shall order the patent or any specified claim or claims thereof cancelled.[40] The general grounds for the cancellation of a patent are:

> "(a) That the invention is not new or patentable in accordance with sections seven, eight, and nine, Chapter II hereof;
> (b) That the specification does not comply with the requirements of section fourteen, Chapter III hereof; or
> (c) That the person to whom the patent was issued was not the true and actual inventor or did not derive his rights from the true and actual inventor."[41]

It will be noted that under the statute,[42] the requisites for the patentability of designs are *originality* and *novelty*, and if assumption is made that Congress intended to make subsection (a) of Section 28

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the applicant is not the first, true, and actual inventor of the thing, and is not entitled to a patent.

2. Was the invention in public use or in public sale in the Philippines more than one year before the inventor applied for a patent therefor? If so, then the invention is considered already dedicated to the public and is no longer capable of being monopolized by its inventor by means of the grant of a patent to him.

3. Has the invention, or something *substantially similar* to it, been patented or described in a printed publication anywhere in the world more than one year before the applicant applied for a patent therefor? If so, then the invention is an old thing and is not worthy of a patent.

4. If the Examiner should discover a previously patented or published invention which, he feels, anticipates the invention under investigation, the next question to determine is whether such an anticipation is one which is so recognized by the courts. The Examiner has to do a lot of comparing of the applicant's *claims* with the patented or published inventions, and a lot of thinking to determine whether or not such claims "read on" or cover such patented or published inventions. If the claims do cover, then the invention under investigation is said to be, in the parlance of patent solicitors, *anticipated*. An anticipated invention is not patentable, and a patent granted for it will be voided by the courts. The determination of this question is important, since, when the patent (if granted) is infringed and the matter is taken to court, *anticipation* will be one of the defenses which the infringer will set up. See Second Annual Report of the Director of Patents, Fiscal Year Ended June 30, 1949, Appendix, pp. 2-4.

[37] Rules of Practice, Rules 58-60.
[38] Rep. Act No. 165, Sec. 28. Rules of Practice, Rule 103.
[39] id., Sec. 31. id., Rule 106.
[40] id., Sec. 32. id., Rule 107.
[41] id., Sec. 28.
[42] id., Sec. 55.

above-cited applicable to design patents, it must necessarily also be assumed that design patents may be cancelled for lack of novelty but not for lack of originality since originality is different from novelty and is not mentioned in said subsection (a) of Section 28. It should also be noted that Section 14 provides that the specification shall include "* * * (d) a complete and detailed description of the invention in such full, clear, concise and exact terms * * *." In the light of these provisions, an interesting question that arises is: could subsections (a) and (b) of Section 28 be made the basis for the cancellation of a *design* patent? In a decision,[43] the Director of Patents held that they could not. The reasons advanced by the Director for his conclusion are logical and reasonable, to wit: (1) that it would be ridiculous to think that Congress intended to allow design patents to be cancelled for lack of novelty but not for lack of originality, it being a well-settled rule of statutory construction that statutes should receive a sensible construction so as to avoid an absurd conclusion;[44] and (2) that the kind of description required by subsection (d) of Section 14 is entirely superfluous and unnecessary in the case of designs. In fact, under the Rules of Practice,[45] a different standard is provided for specifications and claims in the case of designs. Only a general description of the claim is required.

The Director shall also record assignments, licenses, and other instruments relating to any right, title, or interest in and to inventions and patents which are presented in due form to the Patent Office.[46] "Due form" in this case means that the document evidencing the assignment of the invention or any right or interest thereto must be in writing, acknowledged before a notary public or other officer authorized to administer oaths or perform notarial acts and certified under the hand and official seal of the notary or such other officer.[47]

C. NATURE OF ASSIGNABLE INTEREST.

Under the patent law, an assignment may be of the entire right, title, or interest in and to the patent and the invention covered thereby, or of an undivided share of the entire patent and invention, in which event the parties become joint owners thereof.[48] In either case, the monopoly granted by the statute is the *exclusive* right to make, use, and sell the patented machine, article, or product.[49] Any-

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[43] See *Co San v. Jose Ong Lian Bio,* Patents Decision No. 1, Ser. 1952.

[44] See *People v. Rivera,* 59 Phil. 236, 242, (1933); *Director of Lands v. Abaya,* 63 Phil. 559, 565, (1936).

[45] See Rules 78 and 80.

[46] Rep. Act No. 165, Sec. 53. Rules of Practice, Rule 97.

[47] id., Sec. 52. id., Rule 98.

[48] id., Sec. 51. id., Rule 96.

[49] *Ibid.,* Sec. 37. *Ibid.,* Rule 87. "Every patent issued under the laws of the United States for an invention or discovery contains 'a grant to the patentee, his heirs and assigns, for a term of 17 years, of the exclusive right to make, use, and vend the invention or discovery throughout the United States.' The monopoly thus granted is one entire thing, and cannot be divided into parts, except as authorized by these laws." *Waterman v. Mackenzie,* 138 U.S. 252, 256.

thing less would constitute a license. Thus, the exclusive right to make and use, but not to sell, is not an assignment, but merely a license.[50] Neither is the exclusive right to make and sell, but not to use, an assignment, but merely a license.[51] Also, the exclusive right to use and sell, but not to make, is not an assignment, but a mere license.[52] The exclusive right to make and sell for use, or to make, use, and sell for use, has likewise been held to be, not an assignment, but merely a license.[53] But an instrument, although worded as a license, may nevertheless be considered an assignment if it conveys the exclusive right to make, use, and sell.[54]

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[50] *Ibid.*, p. 256.

[51] "The instruments purport to give permits or licenses to manufacture and sell only. It does not include the exclusive right to use the invention.

"The exclusive right acquired by a patentee consists of three things: (1) the right to make, (2) the right to use, and (3) the right to vend the invention or discovery. If any of these three is not assigned, the grantee acquires, at most, only a license. See the following: *Gayler v. Wilder*, 10 How. 477; *Mitchell v. Hawley*, 16 Wall. 544; *Hayward v. Andrews*, 106 U.S. 672; *Waterman v. Mackenzie*, 138 U.S. 252, 255-257.

"In view of these authorities, it must be held that complainant acquired something less than the entire right conferred by the letters patent upon the patentee." *Southern Textile v. Fay Stocking*, 243 Fed. 917, 922 (N.D. Ohio, 1917).

[52] "It is apparent that what was granted to Morgan was only the exclusive right to use, within the territory specified, the patented acid in making self-raising flour, and use and sell in said territory the flour so made. The acid used in making the self-raising flour was all of it to be purchased from the Rumford Chemical Works. No right was granted to make the acid, or to use it or sell it otherwise than as an ingredient in the self-raising flour.

"Morgan was not an assignee of the entire right secured by the patent, nor of any undivided part of such entire right, nor of the exclusive interest in such entire right for the territory specified. He did not acquire the whole of the exclusive right or legal estate vested in the Rumford Works by the patent for the said territory, leaving no interest, in his grantor for that territory, as to anything granted by the patent. It is well-settled that a transfer of a right such as Morgan acquired is not an assignment, nor such a grant of exclusive right as the statute speaks of, but is a mere license." *Oliver v. Rumford Chemical Works*, 109 U.S. 75, 81 (1883).

[53] "The grant to the plaintiff of the exclusive right, under the patent is set forth in the following provisions of the instrument: 'I hereby sell and grant the exclusive right, license, and privilege to manufacture and sell for use in any and all places.'

"By the terms of this provision there is no grant of the exclusive right to use, but the grant is limited to the exclusive right to manufacture and sell. The words 'for use in any and all places' cannot be construed as a grant of the exclusive use. These words follow the grant of the exclusive, and can only be interpreted as signifying the right to use in any and all places the patented article which may be manufactured and sold by the plaintiff." *Atwood Lock v. Yale and Towne Co.*, 115 Fed. 332, 333 (Mass. 1902).

[54] "Whether a transfer of a particular right or interest under a patent is an assignment or a license does not depend upon the name by which it calls itself, but upon the legal effect of its provisions." *Waterman v. Mackenzie*, 138 U.S. 252, 256 (1890).

"A sole and exclusive license to use, manufacture, and vend a patented structure may be held equivalent to an assignment where the document is consistent with a

D. THE ALBAÑA CASE.

In *Albaña v. Director of Patents*,[55] Dolorito Feliciano and Maximo Tapinio jointly applied on March 7, 1950 for a patent on an invention relating to a wattmeter guard and detector for the prevention of theft of electric current. Pending the examination of the application, Meliton Albaña filed a motion to intervene, claiming that the applicant-inventors, by virtue of a document executed by them, had sold, bartered, and assigned to him the invention with its letter patent, if issued, and all the rights and privileges thereof. As the document was not in due form, Albaña asked the Director of Patents to compel the joint-inventors, particularly Maximo Tapinio, who had refused to sign, to sign the document and to acknowledge it before a notary public. Albaña's purpose was to have the document recorded in the Patent Office so as to entitle him to be included as a co-patentee of the invention, once the patent is granted.[56]

The Director of Patents denied the motion to intervene, on the ground of lack of jurisdiction. Petitioner Albaña appealed from this decision of the Director.

In resolving the question, the Supreme Court, speaking through Justice Padilla, upheld the decision of the Director of Patents. The Court said:

> "* * * Under Republic Act No. 165, the Director of Patents has no authority to compel the applicant-inventors to do what appellant is asking them to perform. It is essentially a judicial function requiring a determination or finding by a court of competent jurisdiction as to whether there was a meeting of the minds of the contracting parties before it could compel the applicant-inventors to do what appellant prays the court to order them to do. Aside from want of authority and power, the Director of Patents lacks the means necessary to make such determination and finding, which would be necessary before he could act on appellant's motion."

The Court's stand is well-taken. The pronouncement is in conformity with the law and with the doctrines of adjudicated cases. It is well-settled that where a special law creates an administrative tribunal with limited jurisdiction, the powers appertaining to such a body must rest upon the terms of the statute itself, and must be limited to those conferred expressly or by necessary or fair implica-

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present transfer of the patent." *Rhodes-Hockreim Manufacturing v. International Ticket*, 57 F 2d 713, 714 (Del. 1932).

[55] G. R. No. L-4572, prom. May 22, 1953.

[56] The patent was issued to the applicant-inventors on November 15, 1950, before this appeal was made, in accordance with Rule 29 of the Rules of Practice Relating to Patents, which reads as follows:

"29. In case the inventor has made an assignment of the whole interest in the invention, the application for a patent may be filed by the assignee but the oath of inventorship must be made by the actual inventor, if alive, or by his executor or administrator, if he is dead. In the case of an assignment of the whole interest in the patent to be granted, the patent will issue to the assignee; and if the assignee holds an undivided

tion. It could not go beyond the law of its creation.[57] In the instant case, a reading of the pertinent provisions of the patent law [58] will show that nothing therein could be construed as authorizing the Director of Patents to enforce an agreement by which an invention, or the patent thereof, or of an interest in any of them, is alleged to have been assigned by the inventor or inventors to another, where the existence of such an alleged agreement is in dispute. The powers lodged in the Director by the statute are only quasi-judicial in nature; they are not general judicial powers.[59] For him to settle or decide the controversy would mean arrogating unto himself strictly judicial power.[60] Such a question presented, therefore, is clearly beyond his jurisdiction.

Appellant Albaña, however, contends that the terms of the document make him an assignee of the undivided part interests in the invention, which entitles him to be adjudged and declared a co-patentee. Even if this were the case, still appellant's case will not prosper as the said document was not validly made.[61] But assuming that the instrument has been duly signed and notarized as required by law, is the agreement contained therein one by which the co-inventors have assigned to the appellant a right in the patent or in the invention covered thereby, as to entitle the latter, as he claims, to be included as a co-patentee? In deciding the issue adversely to the appellant, the Court held that the alleged assignment is not one of the exclusive right to make, use, and sell the invention,[62] but only an agreement to act as selling agent for the inventors and to receive compensation therefor.[63] In other words, the agreement was a mere

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part interest, the patent will issue jointly to the inventor and the assignee, *but the assignment in either case must first have been entered of record in the Patent Office, and at a day not later than the date of the actual issue of the patent;* and if it be dated subsequently to the execution of the application, it must give the serial number and the date of its filing, so that there can be no mistake as to the particular invention referred to." See Appellant's Brief, Appendix B.

[57] A commission created by the legislature to administer a statute is wholly limited in its power and authority by the law of its creation. See *Layman v. State Unemployment Commission,* 136 ALR 1468, 167 Or. 579, 117 P 2d 974.

[58] Secs. 52-53.

[59] *Supra,* see notes 9 and 10.

[60] An action brought either to enforce or to annul a contract of which a patent is the subject matter is not one arising under the patent laws, and is therefore within the jurisdiction of a state court. See *Hold Stitch Fabric Mach. Co. v. May Hosiery Mills,* 167 ALR 1104, 184 Tenn. 19, 195 S.W. 2d 18.

[61] Rep. Act No. 165, Secs. 52-53. Rules of Practice, Rules 97-98.

[62] *Supra,* see note 49.

[63] Under Rule 96 of the Rules of Practice in the Philippines Patent Office, it is provided:

"Interests in patents may be vested in assignees, in grantees of exclusive territorial rights, in mortgagees, and licensees.

"(a) An assignee is generally understood to be a transferee of the whole interest of the original patent or of an undivided part of such whole interest, extending to every portion of a country or state.

"license" and not an "assignment" as appellant stated. As understood in Patent Law, a license by the owner of a patent right to make, use or vend the patented article is a transfer of any interest therein, less than that passing by assignment.[64]

The Court's view finds support in the stipulations of the contract.[65] Under its terms, it is apparent that the intention of the parties was to make appellant their "selling agent," his compensation depending on his success in selling the invention for and in behalf of his principals. If he succeeds in selling, his right to compensation arises. If he does not, he would not receive anything from the joint inventors. This, clearly, is not compatible with the idea of assignment, for if it were, then from the time of its execution, the appellant should be entitled to an interest in the patent or the invention covered thereby.[66]

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"(b) A grantee is generally understood to be one who acquires by the grant the exclusive right, under the patent, to make, use, and vend, the thing patented within and throughout some specified part of a country or state, excluding the patentee therefrom.

"(c) A licensee is generally understood to be one who takes an interest less than or different from either assignee, grantee, or mortagagee."

[64] "An owner of a patent has the right to sell it or keep it; to manufacture the article himself or license others to manufacture it; to sell such article himself or authorize others to sell it." See *E. Bement & Sons v. National Harrow Co.*, 186 U.S. 70, 46 L. Ed. 1058, 22 S. Ct. 747.

[65] The stipulations in the contract referred to are as follows: "For and in consideration of the monetary and other helps that said Mr. Meliton Albaña * * * has rendered and is rendering us * * * of approaching, interesting, and looking for subscribers and payers to the capital stocks of said Corporation to be, * * * we hereby promise and actually pay to said Mr. Albaña in installments, Fifty Thousand Pesos (₱50,000) of said ₱200,000 installments cash purchase price, and one hundred forty-two thousand pesos (₱142,000) of the ₱300,000 shares of stock purchase price * * *

Notwithstanding all the above or foregoing, should said Mr. Albaña be able to find or realize or bring about a better or higher purchase price than that above stated * * * we will give and actually pay him three fourths (¾) of all the surplus over and above said purchase price of ₱200,000 in installments cash and ₱300,000 in shares of stock of said corporation, and keep for ourselves only the remaining one fourth (¼) of said surplus. * * *" See Appellant's Brief, pp. 13-14.

[66] See Rule 96, *supra*.