DOMINION AUTO ACCESSORIES LIMITED (*Defendant*) ..... APPELLANT;

1965
*Mar. 17
June 7

AND

BARBARA B. DE FREES and BETTS MACHINE COMPANY (*Plaintiffs*) ..... RESPONDENTS.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Patents—Infringement—Whether patent valid—Anticipation—Workshop improvement—Patent Act, R.S.C. 1952, c. 203.

The plaintiffs sued the defendant for infringement of a patent. The defendant conceded that it was guilty of infringement if the patent was found to be valid. The invention related to a removable sealing device for vehicle marking lights, which are used to outline trucks at night. The defendant contended that the invention was an obvious workshop improvement. The Exchequer Court held that the plaintiffs had a valid patent and that it had been infringed by the defendant. The latter appealed to this Court.

Held: The appeal should be dismissed.

The Exchequer Court was correct in finding that the claim of the letters patent had not been anticipated, that it defined an invention and that it was not an obvious workshop improvement.

Brevets—Contrefaçon—Validité du brevet—Anticipation—Perfectionnement d'atelier—Loi sur les Brevets, S.R.C. 1952, c. 203.

Les demandeurs ont poursuivi le défendeur pour contrefaçon d'un brevet. Le défendeur a admis qu'il était coupable de contrefaçon s'il était jugé que le brevet était valide. L'invention se rapporte à un appareil détachable sous scellés pour les lanternes marquant les véhicules et qui servent à délimiter les contours des camions la nuit. Le défendeur a prétendu que l'invention était un perfectionnement d'atelier manifeste. La Cour de l'Échiquier a jugé que les demandeurs avaient un brevet valide et que le défendeur était coupable de contrefaçon. Ce dernier en appela devant cette Cour.

Arrêt: L'appel doit être rejeté.

La Cour de l'Échiquier a eu raison en adjugeant que la revendication dans les lettres patentes n'avait pas été anticipée, qu'il y avait eu invention et qu'il ne s'agissait pas d'un perfectionnement d'atelier manifeste.

APPEL d'un jugement du Juge Noël de la Cour de l'Échiquier du Canada[1], maintenant une action pour contrefaçon de brevet. Appel rejeté.

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*PRESENT: Taschereau C.J. and Abbott, Martland, Ritchie and Hall JJ.

[1] [1964] Ex. C.R. 331, 25 Fox Pat. C. 58.

1965

DOMINION AUTO ACCESSORIES LTD. v. DE FREES et al.

APPEAL from a judgment of Noël J. of the Exchequer Court of Canada[1], maintaining an action for infringement of a patent. Appeal dismissed.

Donald F. Sim, Q.C., for the defendant, appellant.

Gordon W. Ford, Q.C., and *David M. Rogers*, for the plaintiffs, respondents.

The judgment of the Court was delivered by

HALL J.:—This is an appeal by the appellant from the judgment of the Honourable Mr. Justice Noël in the Exchequer Court of Canada[1] dated October 23, 1963, holding the respondents' Patent No. 522,093 to be valid and to have been infringed by the appellant.

The action was for infringement of a patent, issued on February 28, 1956, to Joseph H. DeFrees, now owned by the respondent Barbara B. DeFrees, and licensed exclusively to the respondent Betts Machine Company, a United States corporation with head office in Warren, Pennsylvania.

The only question in issue is the validity of the respondents' patent. The appellant concedes that it has infringed the patent if the patent if found to be valid.

The invention relates to a "REMOVABLE SEALING DEVICE FOR VEHICLE MARKING LIGHT". Vehicle marking lights are used primarily on tanker trucks that travel on a highway and indicate at night the bounds of the truck, its edges and corners so as to indicate to other drivers the limits of the vehicle for the purpose of avoiding accidents. Some of these lights are also used to show the height of the vehicle. The lights on the side of the trucks are termed "coloured lights" whereas those at the front and at the rear are called "clearance lights".

The patent in suit is described at length in the judgment under appeal, but in short the claim covers a vapour-proof vehicle lamp consisting of a cup-shaped housing, a slightly cupped lens and a means of securing the two together; the lens goes into the housing telescopically and the housing is shaped to accept that telescope. The sealing of both parts is effected by means of O-rings and two mating grooves, one on the housing and the other on the lens so that when they come together in the proper relationship they snap into

[1] [1964] Ex. C.R. 331, 25 Fox Pat. C. 58.

position. When the grooves are in alignment and the O-ring is seated between them to effect a seal the flange on the outside of the lens abuts against the flange on the housing which is the snap seal effect.

The appellant argued that the judgment of Noël J. was erroneous in the following respects:

1. In finding Canadian Letters Patent No. 522,093 valid.
2. In finding that the claim of the said Letters Patent had not been anticipated.
3. In finding that the claim of the said Letters Patent defined an invention and was not an obvious workshop improvement.

The learned trial judge fully reviewed all the prior art, and concluded by saying:

> This exhaustive review of all the prior art enables me to say without hestitation that in none of the patents cited would the patentee in suit have found the solution that he solved by his patent and, consequently, the attack on the patent in suit on the basis of anticipation or lack of novelty must fail.

He then dealt fully with the matter of inventiveness or inventive ingenuity, and following an exhaustive review of the relevant law and of prior patents and devices, he rejected the claim that the device described in the patent was merely a workshop improvement and said:

> There is, therefore, here, in my opinion, impressive evidence of inventiveness and of a want in the fuel tanker trade that remained unfulfilled until the DeFrees patent came along and, consequently, the defendant's attack on the patent in this respect must fail.

Having considered the evidence, the arguments of counsel and the authorities to which they referred, and having the advantage of the exhaustive review of both the prior art and on the question of inventiveness so fully gone into by the learned trial judge, I find myself wholly in agreement with his conclusions and reasons and I am content to adopt them.

The appeal must, therefore, be dismissed with costs and the judgment of Noël J. affirmed.

Appeal dismissed with costs.

Solicitors for the defendant, appellant: McCarthy & McCarthy, Toronto.

Solicitors for the plaintiffs, respondents: Rogers & Bereskin, Toronto.