

1940 CANADIAN TIRE CORPORATION, }  
 \*Mar. 15, 18. LIMITED (DEFENDANT)..... } APPELLANT;  
 \*April 23.

AND

SAMSON-UNITED OF CANADA LIM- }  
 ITED AND SAMSON-UNITED COR- } RESPONDENTS.  
 PORATION (PLAINTIFFS)..... }

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

*Patent—Infringement—Substance of the invention—Essential or non-essential elements.*

This Court dismissed defendant's appeal from the judgment of Maclean J., [1939] Ex. C.R. 277, holding that the patent in question was valid and had been infringed by defendant. The patent was for improvement in fans and the invention related to fans for producing air currents and had for its principal object to provide such a fan with flexible fan blades of suitable material and shape to give the blades stability for an efficient operation of the fan combined with sufficient flexibility to cause any portion of the moving blades to yield when a stationary rigid or semi-rigid member is brought in contact with them, and to be self-restoring to normal position when the intruded member is withdrawn. This Court *held* that the substance of the invention lay in shaping the blade in such fashion as to maintain the rigidity of its base and body while leaving the edges sufficiently flexible to be harmless; and in this there was novelty and invention, and in substance this has been taken by defendant; that the bow-like slot in which the rubber blades were inserted, an element not taken by defendant, was only a particular means for maintaining the cupped shape of the base and body of the blade and thereby imparting to it the necessary rigidity; and, as a particular means only for maintaining this rigidity which was the essential thing, it was non-essential.

APPEAL by the defendant from the judgment of Maclean J., President of the Exchequer Court of Canada (1), holding that, as between the plaintiffs and the defendant, the claims in question (numbers 1 to 8, inclusive, and 15 and 18) of letters patent number 370,548, were valid and had been infringed by the defendant. The said letters patent were granted to the plaintiff Samson-United Corporation, the assignee of Abe O. Samuels, the applicant, and the plaintiff Samson-United of Canada, Limited, was

(1) [1939] Ex.C.R. 227; [1939] 3 D.L.R. 365.

\*PRESENT:—Duff C.J. and Crocket, Davis, Hudson and Taschereau JJ.

the exclusive licensee for Canada. The patent was granted for an alleged new and useful improvement in fans. The specification stated (*inter alia*) that the invention.

relates to fans for producing air currents and has for its principal object to provide such a fan with flexible fan blades of suitable material and shape to give the blades stability for an efficient operation of the fan combined with sufficient flexibility to cause any portion of the moving blades to yield when a stationary rigid or semi-rigid member is brought in contact with them, and to be self-restoring to normal position when the intruded member is withdrawn.

1940  
CANADIAN  
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v.  
SAMSON-  
UNITED OF  
CANADA LTD.  
*et al.*

Leave to appeal was granted by a judge of this Court.

*W. L. Scott K.C.* and *Cuthbert Scott* for the appellant.

*M. Crabtree K.C.* and *E. G. Gowling* for the respondents.

The judgment of the Court was delivered by

THE CHIEF JUSTICE.—I think the decision in this appeal turns upon the question whether the bow-like slot in which Samuels' rubber blades are inserted is an essential element in his invention. If it is, there is no infringement because that element has not been taken.

I have come to the conclusion, however, that this is only a particular means for maintaining the cupped shape of the base and body of the blade and thereby imparting to it the necessary rigidity; and, as a particular means only for maintaining this rigidity which is the essential thing, it is non-essential. The point is not without difficulty but it does not, as I see it, lend itself to extended discussion. The substance of the invention lies in shaping the blade in such fashion as to maintain the rigidity of its base and body while leaving the edges sufficiently flexible to be harmless. In that I think there was novelty and invention and, in substance, this has, I think, been taken. I do not discuss it further but this in no way implies any disrespect to the able and careful argument of Mr. Scott.

The appeal is dismissed with costs.

*Appeal dismissed with costs.*

Solicitors for the appellant: *Ewart, Scott, Kelley, Scott & Howard.*

Solicitors for the respondents: *Crabtree & McKee.*