VANITY FAIR SILK MILLS ..... APPELLANT; 1938

AND

THE COMMISSIONER OF PATENTS.. RESPONDENT.

* June 16.
* Dec. 5.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Patent—Invention—Lack of patentable advance over prior art—Refusal of application for patent, by Commissioner of Patents.

The judgment of Maclean J., President of the Exchequer Court, [1938] Ex. C.R. 1, affirming the refusal of the Commissioner of Patents to grant a patent in respect of certain claims in appellant's assignor's application for patent for an alleged invention of new and useful improvements in Hosiery With Elastic Strain Absorber, on the ground that there was no patentable distinction between the method disclosed in said claims and that disclosed in a certain prior patent, was affirmed; it being held that the alleged invention constituted no patentable advance or improvement upon said prior disclosure.

Semble, The Commissioner of Patents ought not to refuse an application for a patent unless it is clearly without substantial foundation.

APPEAL from the judgment of Maclean J., President of the Exchequer Court of Canada (1), dismissing an appeal from the refusal of the Commissioner of Patents to grant a patent in respect of certain claims in the appellant's assignor's application for patent for an alleged invention of new and useful improvements in Hosiery With Elastic Strain Absorber. The ground of the judgment in the Exchequer Court was that there was no patentable distinction between the method disclosed in said claims and that disclosed in a certain prior patent. The appeal to this Court was dismissed with costs.

W. D. Herridge K.C. for the appellant.
W. L. Scott K.C. for the respondent.

The judgment of the Court was delivered by

THE CHIEF JUSTICE.—We have fully considered the argument addressed to us on behalf of the appellant in this case and we are satisfied that the learned President of the Exchequer Court was right in his conclusion that the invention so-called, which was the subject of claims

(1) [1938] Ex. C.R. 1; [1938] 1 D.L.R. 148.

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

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VANITY FAIR SILK MILLS v. COMMISSIONER OF PATENTS.

Duff C.J.

3 and 4 in Snader's application, constitutes no patentable advance or improvement upon what is disclosed by Adamson.

On behalf of the appellant it was contended that the learned President missed the point in failing to perceive that Snader, in using the Adamson yarn as an instrumentality by which his conception of the use of narrow bands of elastic thread alternating with narrow bands of the knit basic fabric of the stocking would become practically operable, had made a definite advance over Adamson. But we think the learned President is right that Snader's procedure is an application of the ideas disclosed by Adamson which anybody familiar with and skilled in the art might be expected to arrive at without the exercise of invention in the sense of the patent law.

No doubt the Commissioner of Patents ought not to refuse an application for a patent unless it is clearly without substantial foundation. In effect both the President of the Exchequer Court and the Commissioner have held that.

Since, in our opinion, there is no real doubt that the rejected claims are not patentable and it is not suggested that we have not before us all the pertinent material, we ought not to interfere.

The appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitor for the appellant: *William A. MacRae.*

Solicitor for the respondent: *William J. P. O'Meara.*