

March 08, 2017

ARTICLE

Intellectual Property Weekly Abstracts Bulletin - Week of March 6, 2017

Patent Decisions

Patents Relating to Snowmobiles Infringed but Invalid for Insufficiency
Bombardier Recreational Products Inc. v. Arctic Cat Inc., 2017 FC 207

In an action for patent infringement, the Court considered the infringement and validity of four patents, as well as remedies.

The Court reviewed the four patents and provided a summary of the witnesses that appeared. Before construing the disputed terms of the various patents, the Court noted that it "was struck at trial by some attempts that were made by some of the expert witnesses to favour a reading of the patents that would lead to a construction of some of the essential elements that can only be described as defying any common understanding of language." The Court indicated that while experts assist the Court, there is room for common sense in the courtroom.

The Court found infringement of three of the patents and then moved on to consider the validity of the infringed patents. The Court found that the claims were neither anticipated nor obvious, and were not invalid for including false or misleading statements. However, the Court found that the patents were insufficient and therefore invalid. In terms of insufficiency, the Court wrote that "the specification must be of such quality, being correct and full, as to allow the skilled person to put the invention into practice". The Court noted that Bombardier presented little argument with respect to this issue, arguing that the patent must answer "What the invention is?" and "How it works?". The Court found that this is inadequate, and the quality of the description must be considered. The Court also noted that because section 36 of the *Patent Act* requires that each patent contain one invention, it is not possible to consider the three patents together to determine if the specifications together enables a person skilled in the art to make or use the invention. The Court concluded that the patents are ambiguous and insufficient.

The Court addressed some of the additional grounds of invalidity raised by Arctic Cat, including prior public disclosure. The Court found that tests of the Bombardier prototypes on public trials were reasonable experimentation. The Court also found that the public disclosure described by Arctic Cat would not constitute an enabling disclosure.

Finally, the Court addressed objections that were made over the course of trial. One of these objections related to alleged opinion on legal issues and conclusions of law. The Court found that "there is no rule of evidence or rule of the Court mandating that expert evidence must be excluded where the expert strays into the province of the Court by opining on the legal issues before the Court". The Court is not bound by the evidence and must determine the issues before it. The Court did not exclude any evidence on this basis.

The action was dismissed, with costs to Arctic Cat.

Trademark Decisions

Only one 30 page memorandum allowed on a consolidated appeal
Venngo Inc. v. Concierge Connection Inc. (Perkopolis), 2016 FCA 209

The Federal Court of Appeal has held that a party may only file a single 30 page memorandum of fact and law in an appeal after consolidating two separate appeals.

The *Federal Courts Rules* provides that a party may file a memorandum of fact and law that shall not exceed 30 pages in length. Venngo consolidated two appeals and filed a 30 page memorandum in one appeal and a 16 page memorandum in the other. Both memoranda were struck from the record and Venngo was ordered to file a single memorandum for the consolidated appeal that complies with the Rules.


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