Federal Court of Appeal Overturns Infringement Finding Regarding Mobility Aiding Devices

July 18, 2019

Human Care Canada Inc v. Evolution Technologies Inc, 2018 FC 1302, reversed in 2019 FCA 209.

In an action by the patent holder, Human Care Canada Inc. (Human Care), against Evolution Technologies Inc. (Evolution) for a declaration of infringement, Justice Elliot found that Evolution had infringed the patent, and dismissed the Evolution's counterclaim for invalidity. The patent at issue concerned rollators (commonly known as "walkers" with wheels).

Justice Elliot preferred the evidence of the patent holder's experts and witnesses over Evolution's experts. This heavily impacted the claim construction analysis. The interpretation of several terms of the disputed claims was at issue including the meaning of "tension rod means". The Court took issue with Evolution's expert's interpretation of the claims because the expert failed to consider the meaning of the disputed terms in the context of the words around them and the context of the patent itself. When determining whether the disputed portions of the claims were essential, the Court stated "in light of the CGK, it would have been obvious to the POSITA that varying these elements would change the way the invention works. Thus, these elements are essential."

Justice Elliot determined after purposive construction that the claims at issue were infringed by Evolution's rollator because the product contained all the essential elements of the patented rollators.

The Court then determined that the patent was not invalid for obviousness, anticipation or overbreadth. The prior art was analyzed and the evidence of the expert witnesses was heavily relied on. As in the claim construction analysis, the evidence of Human Care's expert was preferred to Evolution's expert because Evolution's expert had applied the obviousness test incorrectly. The Court agreed with Human Care that Evolution's expert had used a hindsight analysis when gathering materials forming the state of the art.

The Federal Court of Appeal (FCA) allowed the appeal regarding infringement, and therefore found it unnecessary to address the Federal Court's dismissal of the invalidity

allegations. The FCA decided that the Federal Court made an extricable error of law by failing to apply at the infringement stage the same construction of “tension rod means” it had adopted during the claim construction analysis.

The Federal Court construed the term “tension rod means” to require that the “means” be primarily in tension. There was no evidence before the Court that the equivalent part of Evolution’s device was primarily in tension when in use. The FCA emphasized that the claims of a patent receive one and the same interpretation for all purposes. The FCA concluded that the Federal Court could not have made a finding of infringement without altering the construction of the term “tension rod means” during the infringement analysis. As a result, the FCA set aside the Federal Court’s decision, dismissing Human Care’s action.

Expertise

Intellectual Property, Copyright, Licensing, Patents, Trademarks

---

BLG | Canada’s Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary
Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa
World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver
1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal
1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription

preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.