

Federal Court



Cour fédérale

**Date: 20160119**

**Docket: T-2060-15**

**Citation: 2016 FC 55**

**Vancouver, British Columbia, January 19, 2016**

**PRESENT: The Honourable Mr. Justice Shore**

**BETWEEN:**

**GRAY MANUFACTURING COMPANY, INC.**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

I. Introduction

[1] This is an application by Gray Manufacturing Company, Inc., formerly known as Gray Automotive Products Co. until January 1, 2007, under section 52 of the *Patent Act*, RSC 1985, c P-4 [Act] for an order to vary all entries in the records of the Patent Office relating to the ownership of Canadian Patent No. 2,406,340 [Canadian Patent] by recording Gray

Manufacturing Company, Inc. as the owner. The registered owner of the Canadian Patent at the Patent Office is Gray Automotive Products, Inc.

[2] This application is uncontested as the Respondent did not participate in the proceedings.

## II. Background

[3] The Canadian Patent lists William J. Baker, of Missouri, as the sole-inventor of the invention embodied in the Canadian Patent [invention]. Mr. Baker developed the invention while he was employed by Gray Automotive Products Co.

[4] Mr. Baker intended to assign all rights, title and interest throughout the world of the invention to his employer; but, inadvertently, in an Assignment agreement, dated June 7, 2002, he assigned his rights, titles and interests in the invention to Gray Automotive Products, Inc., as opposed to Gray Automotive Products Co. The Canadian Patent application, which included the Assignment agreement, was filed under Gray Automotive Products, Inc.

[5] The Applicant submits that the proper registered owner of the Canadian Patent is Gray Manufacturing Company, Inc., which was formerly known as Gray Automotive Products Co. until January 1, 2007. The Applicant further submits that the correction as to the ownership in the registry of the Patent Office is to reflect the actual ownership of the Canadian Patent; and, this correction does not compromise or otherwise affect the substantive aspects of the Canadian Patent and does not adversely impact any public interest. Mr. Baker, the inventor, testified by affidavit that he is not familiar with any entity known as Gray Automotive Products, Inc.

[6] The Applicant submits that he is not aware of any pending litigation relating to the Canadian Patent, neither, is he aware of any party, other than the Commissioner of Patents, who is directly affected by the order sought, or is required to be named under an Act of Parliament. Moreover, the inventor, Mr. Baker, has filed an affidavit in support of this application.

### III. Legislation

[7] The Court's jurisdiction to issue the requested order is set out in the following legislative provision of the *Patent Act*:

#### **Jurisdiction of Federal Court**

**52.** The Federal Court has jurisdiction, on the application of the Commissioner or of any person interested, to order that any entry in the records of the Patent Office relating to the title to a patent be varied or expunged.

#### **Jurisdiction de la Cour fédérale**

**52.** La Cour fédérale est compétente, sur la demande du commissaire ou de toute personne intéressée, pour ordonner que toute inscription dans les registres du Bureau des brevets concernant le titre à un brevet soit modifiée ou radiée.

### IV. Analysis

[8] Section 52 of the Act confers upon the Federal Court a broad jurisdiction to order that an entry in the records of the Patent Officer relating to the title of a patent be varied, on the application of the Commissioner or of any person interested (*Imperial Oil Resources Ltd. v Canada (Attorney General)*, 2015 FC 1218 at para 12 [*Imperial Oil*]). The Applicant is a person of interest as he is the intended owner of the Canadian Patent. Furthermore, this application is supported by the assignor of the Canadian Patent, Mr. Baker; and, this Court has held that an

assignor of a patent is a person of interest (*Micromass UK Ltd. v Canada (Commissioner of Patents)*, 2006 FC 117 at para 14 [*Micromass*]).

[9] The word “title” at section 52 of the Act has been broadly interpreted by this Court to include matters relating to the root of title (*Micromass*, above at para 13; *Imperial Oil*, above at para 13); including “to vary errors relating to the naming of inventors, including adding or removing inventors' names” (*Imperial Oil*, above at para 13) and ownership of a patent (*Imperial Oil*, above at paras 17-18). Thus, given the broad jurisdiction conferred by section 52 of the Act upon the Court to vary the title of a patent; therefore, the Court has the power to vary errors relating to the ownership of a patent.

[10] The evidence submitted by the Applicant supports his position. The inventor intended to assign throughout the world all of his rights, titles and interests in the invention to Gray Automotive Products Co. Inadvertently, he transferred them to Gray Automotive Products, Inc.; and, subsequently the Canadian Patent was wrongly filed under the wrong name. It does appear that this mistake was unintentional, made in good faith, and, was made without any attempt to mislead or cause delay. The above-mentioned facts are supported by the affidavit of the inventor, Mr. Baker. Further the evidence of Mr. Baker is that on January 1, 2007, Gray Automotive Products Co. changed its name to Gray Manufacturing Company, Inc. As such the current name of the proprietor of the patent in Canada is Gray Manufacturing Company, Inc.

[11] The Applicant is entitled to the requested order. The Applicant did not seek costs.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that**

- 1) The application be granted;
- 2) The Commissioner of Patents, pursuant to section 52 of the *Patent Act*, shall vary all entries in the records of the Patent Office with respect to the ownership of Canadian Patent No. 2,406,340 by removing GRAY AUTOMOTIVE PRODUCTS, INC., as owner;
- 3) Thereby, the Commissioner of Patents, pursuant to section 52 of the *Patent Act*, shall vary all entries in the records of the Patent Office with respect to the ownership of Canadian Patent No. 2,406,340 by adding GRAY MANUFACTURING COMPANY, INC. as owner;
- 4) No costs to be assigned.

"Michel M.J. Shore"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-2060-15

**STYLE OF CAUSE:** GRAY MANUFACTURING COMPANY, INC. v THE  
ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** JANUARY 18, 2016

**JUDGMENT AND REASONS:** SHORE J.

**DATED:** JANUARY 19, 2016

**APPEARANCES:**

Scott E. Foster

FOR THE APPLICANT

The Respondent did not appear

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Gowling Lafleur Henderson LLP  
Vancouver, British Columbia

FOR THE APPLICANT