

Date: 20070117

Docket: T-1377-04

Citation: 2007 FC 33

BETWEEN:

RACHALEX HOLDINGS INC. and TYRONE NAGTHALL

Plaintiffs

and

**W & M WIRE & METAL PRODUCTS LTD. and
921410 ONTARIO LTD. c.o.b. THE DISPLAY BANK**

Defendants

REASONS FOR ORDER

**(Delivered from the bench in Toronto, Ontario
on January 12, 2007)**

HUGESSEN J.

[1] I am not satisfied that the proposed new evidence which is sought to be introduced for the hearing of the coming summary judgment motion is relevant. It deals largely with alleged issues of obviousness and inutility of the patent in suit; those issues have not been raised by the statement of defence or otherwise pleaded. It also purports to introduce a large number of pieces of prior art, none of which have previously been pleaded.

[2] At the time that this motion was brought the issues both in the action as a whole and in the summary judgment motion had been joined. Both sides had filed memoranda of fact and law

preparatory to the hearing of the summary judgment but that hearing had been adjourned due to the withdrawal of defendants' former solicitor.

[3] To allow the present motion would necessarily result in further substantial delay, not the least of which would be the necessity for amendments to the pleadings, possible further discoveries and cross-examinations on affidavits. All of this in my view would cause a prejudice to plaintiff which could not be adequately compensated by an award of costs.

[4] The motion will be dismissed with costs.

“James K. Hugessen”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1377-04

STYLE OF CAUSE: RACHALEX HOLDINGS INC. et al v. W & M WIRE
& METAL PRODUCTS LTD. et al

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 12, 2007

REASONS FOR ORDER: HUGESSEN J.

DATED: JANUARY 17, 2007

APPEARANCES:

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