

Federal Court of Appeal



Cour d'appel fédérale

Date: 20190611

Docket: A-226-18

Citation: 2019 FCA 175

[ENGLISH TRANSLATION]

**CORAM: GAUTHIER J.A.
DE MONTIGNY J.A.
RIVOALEN J.A.**

BETWEEN:

ÉQUIPEMENT DHP INC.

Appellant

and

**ATTORNEY GENERAL OF CANADA,
COMMISSIONER OF PATENTS, 9125-6651 QUÉBEC INC.,
GUY HAMEL AND ROBERT MITCHELL**

Respondents

Heard at Montréal, Quebec, on June 11, 2019.

Judgment delivered from the bench at Montréal, Quebec, on June 11, 2019.

REASONS FOR JUDGMENT OF THE
COURT BY:

GAUTHIER J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the bench at Montréal, Quebec, on June 11, 2019.)

GAUTHIER J.A.

[1] Équipement DHP Inc. (DHP) is appealing the interlocutory order of Justice Lafrenière of the Federal Court dismissing its motion for a stay of re-examination proceedings for Canadian

Patent No. 2,723,630 (Patent 630) before the Canadian Intellectual Property Office's Patent Office.

[2] The only relevant action in this case before the Federal Court is the one commenced by DHP to invalidate certain Canadian patents, including Canadian Patent No. 2,712,715 (Patent 715). In its action, DHP alleges that Guy Hamel misrepresented himself as the sole inventor of the invention described and claimed in Patent 715, contrary to subsection 53(1) of the *Patent Act*, R.S.C. 1985, c. P-4. DHP further alleges that Patent 715 is invalid for lack of novelty (paragraph 28.2(1)(b) of the *Patent Act*) and because the subject matter of the claims was obvious (paragraph 28.3(b) of the *Patent Act*).

[3] Among other things, DHP submits that the Federal Court erred in stating that, regardless of the Federal Court's decision in DHP's action, [TRANSLATION] "it will not change the fate of Patent 630 in terms of the subject matter disclosed in the Patent 715 file". That was an error of law reviewable on the standard of correctness (*Housen v. Nikolaisen*, [2002] 2 SCR 235).

[4] In view of the representations made before us, we do not believe that any declaration of the invalidity of Patent 715 in DHP's action could have any impact on the application of paragraph 28.2(1)(c) of the *Patent Act* in respect of Patent 630 and the ongoing re-examination. That paragraph, which deals with disclosure in a patent application filed before the date of the claims of Patent 630, applies whether a patent is issued following this application or not. Lastly, the Court questions whether it has the power to rule on the validity of a patent application rather than that of a patent.

[5] Under the circumstances, the Federal Court cannot have committed a reviewable error that could justify our intervention. Therefore, the appeal will be dismissed with costs fixed at \$1,500, all-inclusive.

“Johanne Gauthier”

J.A.

Certified true translation
Erich Klein

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-226-18

STYLE OF CAUSE: ÉQUIPEMENT DHP INC. v.
ATTORNEY GENERAL OF
CANADA, COMMISSIONER OF
PATENTS, 9125-6651 QUÉBEC
INC., GUY HAMEL AND
ROBERT MITCHELL

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: JUNE 11, 2019

**REASONS FOR JUDGMENT OF THE COURT
BY:** GAUTHIER J.A.
DE MONTIGNY J.A.
RIVOALEN J.A.

DELIVERED FROM THE BENCH BY: GAUTHIER J.A.

APPEARANCES:

Bob H. Sotiriadis
Catherine Thall Dubé

Hilal El Ayoubi

FOR THE APPELLANT

FOR THE RESPONDENTS
9125-6651 QUÉBEC INC., GUY
HAMEL AND ROBERT
MITCHELL

SOLICITORS OF RECORD:

ROBIC, LLP
Montréal, Quebec

Hilal El Ayoubi
Montréal, Quebec

FOR THE APPELLANT
ÉQUIPEMENT DHP INC.

FOR THE RESPONDENTS
9125-6651 QUÉBEC INC., GUY
HAMEL AND ROBERT
MITCHELL

