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BELL HELICOPTER: PUNITIVE DAMAGES DO FLY!

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The Canadian Federal Court of Appeal recently upheld that the granting of punitive damages in *Bell Helicopter Textron Canada Limitée v. Eurocopter* 2013 FCA 219 [previously discussed at <http://newsletter.robic.ca/nouvelle.aspx?lg=EN&id=215>] was appropriate, distancing itself from the commonly accepted case law regarding punitive damages.

The Facts

Briefly, the case related to the use a “moustache style” landing gear (“Legacy gear”) in Bell Helicopter’s “429” model helicopter, which Eurocopter alleged was infringing its rights residing in the 2,207,787 patent (‘787 patent). Given the facts and the timing of when and how Bell started working and designing its Legacy landing gear, including its awareness of Eurocopter’s landing gear, it was found that the ‘787 patent was infringed and that Bell was liable for punitive damages. Traditionally, this type of ruling is rare, as explicit knowledge of someone else’s patent rights did not normally open the door for such punitive damages. These types of damages were usually reserved for cases where a party’s conduct “has been malicious, oppressive and high-handed, or offends the court’s sense of decency”.

Appeal

On appeal the Court was asked to re-evaluate if there was, in fact, infringement of the ‘787 patent and if the trial judge had erred in finding that punitive damages were to be awarded. With respect to the analysis pertaining to the construction of the relevant claims of the patent, it was found that no palpable and overriding error was made by the Court in defining the common general knowledge, nor in its study of the prior art. There was also a debate regarding whether or not the subject matter of the ‘787 patent could already have been anticipated and if the trial Judge erred in declaring the patent valid in light of this prior art. The Court of Appeal was not convinced and the infringement ruling was upheld.

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Of more particular interest was the question on whether the award of punitive damages would be revised. The Court reiterated that punitive damages may be awarded in “exceptional cases of high-handed, malicious, arbitrary or highly reprehensible misconduct that represents a marked departure from ordinary standards of decent behavior”, which has always been the standard and which can be influenced by many factors. Procedurally speaking, the granting of punitive damages in the present case was made before submissions concerning the quantum for compensatory damages were heard, since the proceeding had a bifurcation order in place. As such, Bell submitted that the trial Judge should not have been able to grant punitive damages, since such entitlement is linked to the award of compensatory damages, such that “punitive damages should only be awarded in those circumstances where the combined award of general and aggravated damages would be insufficient to achieve the goal of punishment and deterrence”.

It was nevertheless decided that: “in appropriate circumstances and depending on the context, it may be sometimes possible to ascertain an entitlement (or a non-entitlement) to punitive damages before the exact quantum of compensatory damages has been established. For example, this would be the case where the compensatory damages, though not precisely quantified, will likely be insufficient to accomplish the objectives of retribution, deterrence and denunciation.”

The present case was found to be precisely the situation identified above, since the Legacy landing gear was never actually sold. Therefore, quantum for ordinary damages would be minimal. As such, according to the court, ordinary damages would be insufficient as to accomplish the objectives of retribution, deterrence and denunciation.

There was also an interesting submission regarding the opportunity to even claim punitive damages in patent infringement cases. Bell Helicopter submitted that “punitive damages should not be awarded against a party that intentionally infringes a patent since “policy principles favor the removal of improper monopolies through the challenge of an invalid patent”. However, the court disagreed and found that “The submission that patent infringers should be immunized from punitive damages for public policy reasons consequently has no legal foundation. [...] Indeed, punitive damages “are very much the exception rather than the rule” and “should be resorted to only in exceptional cases and with restraint”.

It turns out however that this was one of those exceptional cases.

Conclusion

While the Court upheld its decision with respect to patent infringement, this case also reinforced the case law regarding when punitive damages should be granted for patent infringement cases in Canada. It remains to be seen how practitioners will

interpret this to extend its application to other intellectual property matters, such as industrial designs.

