

## A RECENT FEDERAL COURT DECISION: INTERLOCUTORY INJUNCTION - PRIOR ART

by  
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In the matter of *Decopo Inc. v. Le Groupe Canam Manac Inc.* (Quebec Superior Court, No.: 505-05-002699-962, May 21, 1997, yet unreported), Decopo, benefitting from its rights under a patent pertaining to a collapsible and self-loading trailer for the forestry industry, had initiated infringement proceedings and was seeking an interlocutory injunction enjoining Le Groupe Canam Manac ("Canam") from manufacturing and selling a similar trailer.

Canam admitted having clearly and intentionally copied petitioner's trailer but denied all allegations of infringement due to the fact that the latter's patent was invalid based on prior art. In fact, respondent alleged that Decopo's patented trailer was simply a rehashing of an almost identical and non-patented trailer built by another manufacturer (Gaymor) during the 1970's. Canam argued that, having already entered the public domain, the trailer was no longer subject to patent protection at the time of petitioner's application and thereby the validity of the patent was undermined.

The honorable Jean-Pierre Senecal, S.C.J., indicated that while the distinctive feature of petitioner's trailer was the fact that it was collapsible, and therefore easier to displace, this was also true of the Gaymor trailer. Furthermore, the Court indicated that the principals of a free market economy, as they apply in Canada, do not prohibit competitors from copying each others products unless same are protected by statute or the more general principals of passing-off and unfair competition. The Court also went on to note that only the petitioner's rights under the patent had been raised in the case at bar.

Although admitting the existence of similarities between the Gaymor product and its own trailer, Decopo argued the validity of its patent due to the fact that its trailer incorporated many innovative features when compared to its predecessor. While acknowledging the presence of the alleged improvements, Senecal S.C.J. emphasized that same were not the subject of

any of the patent's claims. Quite to the contrary, Senecal S.C.J. concluded that, as drafted, the patent was attempting to secure exclusive rights over the features which had first been introduced by the Gaymor product well over two decades prior to the filing of petitioner's patent application. In effect, the court saw the patent's claims as being too wide and therefore failing to address the specific innovative aspects of the Decopo trailer which may very well have been patentable before their introduction to the market.

The Court briefly reviewed the criteria applicable to requests for interlocutory injunctions as set-out in *Societe de developpement de la Baie-James v. Kanatewat*, (1975) R.J.Q. 2755 (C.A.) 166, which it summarized as follows. Are petitioner's right: (i) clear, (ii) doubtful or (ii) nonexistent. If the petitioner has a clear right, the only other requirement for obtaining an interlocutory injunction is that it suffer irreparable harm. If the petitioner's right is doubtful, the court will then have to consider the balance of inconvenience from a petitioner versus respondent perspective. In the event that petitioner's right is nonexistent, the court will simply refuse to issue an interlocutory injunction.

Having qualified the petitioner's patent as not appearing to be valid due to the existence of the Gaymor trailer, the Court concluded that petitioner's rights fell under the heading of nonexistent and therefore rejected its motion.

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