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## PRACTICE

### JUDGMENT AND ORDERS

#### *Summary Judgment*

*Related subject: Patents*

Motion for summary trial by defendants/plaintiffs by counterclaim Guangzhou Unique Electronics Co. Ltd., Sui Cheng Limited, Shenzhen Gooloo E-Commerce Co. Ltd., Aukey Technology Co. Ltd. (moving defendants) arising from patent action brought against them — Plaintiff/defendant by counterclaim (hereinafter plaintiff) alleging certain vehicle battery jump starters offered for sale in Canada by defendants infringing certain claims of Canadian Patent No. 2916782 ('782 patent) — Moving defendants defending these allegations on basis their jump starters not infringing asserted claims of '782 patent — Also counterclaiming for various relief, including declaration that their newer jump starters, equipped with CC-209 printed circuit board (CC-209 products), not infringing any claim of '782 patent — Moving defendants seeking judgment prior to trial on their counterclaim pursuant to *Federal Courts Rules*, SOR/98-106, r. 216 — Asserting a summary determination of issues on this motion will streamline action going forward, possibly leading to settlement of action — Submitting there has been palpable culture shift to summary disposition, including in patent cases — Also submitting, *inter alia*, issues on this motion simple, straightforward, suitable for summary adjudication — Plaintiff submitting not appropriate to decide issues on this motion summarily — Arguing that moving defendants' motion request for summary judgment under r. 215 — Pointing to *Gemak Trust v. Jempak Corporation*, 2022 FCA 141 (*Gemak*), where Federal Court of Appeal overturned Federal Court's decision on summary judgment motion that turned on only two claim construction issues — Stating insufficient evidence before Court to make determination on infringement for CC-209 products, *viva voce* evidence not remedying problems of deciding issues on this motion in summary way — Whether summary judgment or summary trial "appropriate" — Moving defendants not meeting burden of demonstrating that issues should be decided summarily — Issues raised by moving defendants not suitable for summary trial — Court having wide discretion to determine whether unjust to grant judgment — Moving defendants brought r. 216 motion, should not be dismissed for failing to meet requirements of r. 215 — However, factors to be considered in deciding whether matter suitable for summary disposition under rr. 215, 216 overlapping — Summary judgment not reserved for clearest of cases — Apparent conflict in evidence not precluding summary judgment — Judges faced with motion for summary disposition based on paper record may be guided by similar factors to decide whether matter suitable for summary adjudication, regardless of whether motion made under r. 215 or 216 — Cautionary comments in *Gemak* applicable to this case — Moving defendants not presenting sufficiently narrow, well-defined non-infringement issue suitable for summary adjudication — Moving defendants presented multiple non-infringement arguments, range of possible non-infringement declarations that Court could make, with expectation that Court could decide motion on narrower basis or re-define relief — Such an approach inconsistent with values underlying summary adjudication as means for proportionate, cost-effective, timely dispute resolution that fairly balances expediency with just resolution of issues in dispute — In this case, motion raising multiple, complex issues of claim

construction, infringement not framed in manner suitable for summary determination — Declaration of non-infringement for CC-209 products would leave infringement, validity issues for trial — Evidence on this motion demonstrating serious issues with respect to underlying factual basis for deciding infringement — Allowing discovery process to unfold is more proportionate, efficient way to address these issues, particularly under case management — Deciding issues raised on this motion not assisting in efficiently resolving action due to prospect of streamlining proceeding or increasing likelihood of settlement — Insufficient evidence on this motion to fairly, justly adjudicate whether CC-209 products infringing '782 patent — Cases should go to trial where serious issues with respect to credibility of witnesses present — Here, credibility issues with witnesses affecting multiple, important issues Court being asked to decide summarily — Cannot be addressed justly, fairly by summary proceeding — Motion dismissed.

NOCO COMPANY, INC. V. GUANGZHOU UNIQUE ELECTRONICS CO., LTD. (T-484-21, 2023 FC 208, Pallotta J., public reasons for order dated February 13, 2023, 49 pp.)