BETWEEN:

O'CEDAR OF CANADA LIMITED .....PLAINTIFF;

AND

MALLORY HARDWARE PRODUCTS LIMITED .....DEFENDANT.

1953
Sept. 30
Oct. 1-2, 5-7
1955
Dec. 30

Patents—The Patent Act, 1935, S. of C. 1935, c. 32, ss. 35, 47—Invention to be defined in claim—Anticipation—Statutory presumption of validity—Onus of showing lack of inventive ingenuity on person attacking patent—Test of correctness of specification—Permissible to look to specification and drawings to determine meaning of word "obtuse" in claim 6—Evidence of happenings in another country cannot affect validity of claims in Canadian patent—Construction of re-issued patent.

The plaintiff sued for infringement of its patent for improvements in a mop of the self-wringing type. The validity of the patent was attacked for anticipation and lack of subject matter on the ground that the invention as claimed was broader than as described and was merely a workshop improvement over the prior art, and infringement was denied.

Held: That the fact that there is a correct and full description of the invention and its operation or use in the specification will not avail the patentee unless the invention so described is defined in one of the claims for it is only the invention as claimed that falls to be considered.

2. That the invention as defined in claim 6 was not anticipated.

3. That in view of the statutory presumption in favour of the validity of a patent the onus of showing that the invention covered by it was merely an obvious workshop improvement lies on the person attacking the patent.

4. That the simplicity of a device is not proof that it was obvious and that inventive ingenuity was not required to produce it.

(1) [1955] Ex. C.R. 229 at 240.

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5. That where there has been a substantial and useful advance over the prior art the Court should not give effect to an attack on the validity of the patent covering it on the ground that the advance was an obvious workshop improvement unless it is clearly so. In view of the statutory presumption in favour of the patent the Court should not make the onus of showing its invalidity an easy one to discharge.

6. That the combination which the inventors finally worked out was the result of careful analysis of the prior art and thoughtful study and experimentation. It enabled them to produce a more efficient mop than any mop previously in existence. The combination involved a substantial exercise of inventive ingenuity and was not an obvious workshop improvement.

7. That it is essential that the Court should be fair to the inventors. There may be faults of expression in a patent specification but they do not necessarily affect the validity of the patent for a patent specification is not an exercise of composition to be judged by the canons of grammar or rhetoric. The specification is addressed to persons skilled in the art and the test of the correctness of the specification, including the claims with which it ends, is whether such persons, having the common knowledge of the art, would know without doubt exactly what the invention as defined in the claim is. It should be construed fairly.

8. That it is permissible to look to the specification and the drawings for the purpose of construing the meaning to be assigned to the word "obtuse" as used in claim 6 and to determine the degree of obtuseness of the angle referred to in the claim.

9. That, in any event, the degree of obtuseness of the angle is defined in the claim itself.

10. That claim 6 is not broader than the invention described in the specification and that it and claim 5 are valid.

11. That evidence of a patent application made after the date of the patent in suit but prior to the date of the re-issue of the patent is not admissible.

12. That what happened in another country under a different system of law cannot affect the validity or invalidity of the claims in a Canadian patent, and evidence of an application for a United States patent and a declaration of interference by the United States Patent Office is inadmissible.

13. That when a patent has been re-issued on a petition for re-issue the Court should look at the re-issued patent only in the light of its disclosures and claims without regard to how any changes came to be made in it as the result of the petition for re-issue.

14. That the defendant's mop was an infringement of the plaintiff's right to the invention defined in claim 6.

ACTION for infringement of patent.

The action was tried before the President of the Court at Toronto.

H. G. Fox, Q.C. for plaintiff.

Christopher Robinson, Q.C. and *R. H. Saffrey* for defendant.

The facts and questions of law raised are stated in the reasons for judgment.

THE PRESIDENT now (December 30, 1955) delivered the following judgment:

This is an action for infringement of the plaintiff's rights under Letters Patent No. 477,364, dated September 25, 1951, and issued to it as the assignee of Nathaniel B. Greenleaf and Leonard C. Webster, the co-inventors of the invention covered by it. The patent was a re-issue of Patent No. 459,142, dated August 23, 1949.

The invention relates to improvements in mops, particularly of the self-wringing type. The specification sets out its principal object as follows:

the principal object of the invention is to provide a mop of simplified and extremely economical construction which will enable the wringing of the mopping element or sponge to be more expeditiously and efficiently accomplished than with previous mop constructions to effectively flush the dirt out of the mopping element rather than force it deeper into the mopping element as occurs in present self-wringing mops.

and further objects as follows:

A further important object is to eliminate the expensive double-hinge arrangement of the wringing element previously required.

A further object of importance is to provide a mop in which the mopping element can be quickly secured to the head of the mop and will be positively retained against accidental dislodgement or it can be readily removed and replaced with a minimum of effort.

Another object is to provide a mop which will be extremely convenient to use and which will not scratch or mar the furniture or other woodwork during use.

A still further object contemplated is to provide a mop of the type referred to which will eliminate scuffing of the floor by the mop head even when the handle is inclined at a small angle to the flooring when mopping under furniture or other objects.

The principal feature of the invention is set out in what counsel for the plaintiff called the consistory clause as follows:

The principal feature of the invention consists in providing a specially curved presser or squeezing plate secured by a single hinge to the rear of the mop head and shaping the mopping element carried by the mop head to incline rearwardly whereby the mopping element and presser plate when swung to the wringing position are in co-operative relation to provide a positive squeezing of the mopping element in a direction from back to front upon further movement of the presser plate to flush the dirt accumulating under normal mopping at the forward edge of the mopping element back out the front thereof.

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Other features of the invention are then described as follows:

A further important feature is to shape the mopping element to increase the volume of material at the forward edge where it is most susceptible to wear to increase its life.

Another feature is to provide a positive wringing action which, while effectively removing water and dirt from the mopping element, will not tear or damage the material thereof.

Another feature consists in providing a positive interlock between the mopping element and the mop head.

A further feature consists in forming the mopping element to overlap the mop head to provide a cushioning bumper surface around the mop head and reinforcing the forward edge of the mopping element to prevent this portion from yielding under sharp impact to expose the hard surfaces of the mop head.

A still further feature of importance consists in providing a hinge structure for the presser plate in which the hinge thereof is arranged *above* the mop head and clear of the flooring when the mop is used under furniture or other obstacles with the handle inclined at a small angle to the flooring.

The figures in the drawings accompanying the specification are described in detail but it will be sufficient to give a brief description of the principal parts of the mop and the manner in which they are arranged. The mop is a wet mop most commonly used for cleaning floors and is a back presser mop, as distinguished from the front presser mops that were on the market. Apart from the handle there are three principal parts, the mop head plate, the mopping element or sponge and the presser plate which is the wringing element. The mop head plate, which I shall call the head plate, is a flat rectangular metal plate to the top of which there is secured at its centre a screw socket to receive a wooden handle, the socket and handle extending upwardly at approximately a right angle to the plane of the plate. The mopping element or sponge is of a highly absorbent material, preferably cellulose. It is in the form of a quadrangular block with its upper surface slabbed or bevelled rearwardly and its front and rear surfaces at right angles to the bottom. The block is thus thinner at the back than at the front. The sponge is attached to a fabric with a suitable heat-resistant adhesive, such as cellulose acetate, and the sponge with its adhering fabric is attached to the underside of the head plate by screws in such a way that it can easily be removed when it is worn out and a new sponge put in its place. The sponge with its adhering fabric extends

beyond the edges of the head plate along its entire perimeter thus acting as a cushion when the mop is pushed against furniture or any other wood substance. The presser plate, which forms the wringing element of the mop, is of arcuate or angular formation and is a metal grid with spaced openings and re-inforcing ribs. The manner in which it is connected with the head plate so that it can perform the wringing function intended for it may be described briefly. In the first place, it is hinged to the head plate at the back. This is why the mop is called a back presser mop. A rolled extension of the edge near the head plate forms hinged barrels which interleave with hinge barrels formed by a rolled extension of the back edge of the head plate. These interlocking barrels receive the hinge pintle and so form the hinge which connects the presser plate with the head plate. It is also to be noted that the hinge thus formed is above the head plate. There is an important part of the presser plate which is described as the pivot connecting portion. This is formed by bending or curving the edge of the presser plate near the hinge downward so that the sponge pressing portion of the presser plate is above the hinge. The bent down edge is the pivot connecting portion. The angle formed by the pivot connecting portion and the sponge pressing portion is an obtuse angle that is approximately a right angle. The edge of the presser plate farthest from the hinge is also bent or curved downward to form a lip. There is a handle to the presser plate. When the presser plate is not in use it is kept in place behind the handle of the mop by means of a spring at the hinge.

The manner in which the plaintiff's mop, which is known in the trade as the Chan Mop, operates may be briefly described. When the sponge is wet it becomes very soft and pliable. As the operator pushes the mop forward the bottom of the front face of the sponge tends to fold under so that when the mop is raised from the floor to be wrung the water and dirt gathered up during the mopping is largely at the bottom of the front face of the sponge that has been folded under and on the bottom. When the mop is ready to be wrung to get rid of the water and the dirt accumulated during the mopping the presser plate is swung from its

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position behind the handle of the mop into wringing position. As pressure is applied to the handle of the presser plate the thin back edge of the sponge is first compressed and then under continued pressure the squeezing action continues progressively towards the front edge and flushes the accumulated dirt out the front face of the sponge. Then, as the specification puts it:

> Due to the inclined position of the mopping element and the curvature of the presser plate as the squeezing action continues still further the pressure applied will approach a substantially uniform value throughout the mopping element, and in the finalized position assumed by the presser plate the mopping element will be thoroughly and substantially uniformly wrung and substantially all of the dirt will be flushed therefrom.

Before I attempt to consider the validity of the plaintiff's patent I should set out the state of the prior art. I shall refer to the various kinds of mops mentioned in the evidence and the disadvantages to which each was said to be subject. My enumeration is not necessarily in order of importance or time of invention or production. I shall refer first to the so-called Miracle Mop. This was the only presser mop in use in Canada prior to the plaintiff's invention but there was a similar mop in use in the United States known as the Lux Mop. The Miracle Mop was a front presser mop, that is to say, the presser plate was hinged to the head plate at the front so that the wringing action was from the front of the sponge to the back. It had several disadvantages. It was complicated in design, awkward to use because of its double hinge action and expensive to produce. Moreover, the presser plate, being at the front of the handle when not in use, tended to hit and scratch furniture when the mop was pushed under it. It was also said that when the mop was used under furniture the back of the head plate tended to scratch the floor. There were also serious disadvantages due to the front to back wringing action. As the presser plate was brought over to compress the sponge it came into contact with its front face just below the point of contact of the sponge with the head plate and pulled the front down thereby putting a strain on the bonding between it and the fabric to which it adhered. But this was not the most serious disadvantage of the front presser mop. In the mopping action the bottom of the front face of the sponge folded under and the greatest accumulation of dirt was on the bottom of the

sponge near its front face and on the front face near its bottom. As the presser plate was brought into action it impinged, as already stated, on the front face of the sponge and then on the bottom and tended to force the accumulated dirt back into the interstices of the sponge so that it was left there with danger of rot and decomposition of the cellulose. Moreover, the continued pressure of the presser plate tended to cause part of the sponge to extend beyond the area of pressure which left it not subject to pressure. Moreover, the wringing action was not uniform or complete.

The next mop construction was that shown by United States Patent No. 2,196,837, dated April 9, 1940, issued to L. P. Rader. Here part of the sponge was enclosed in a holder and the balance was between two plates extending downward one of which was called a backing plate and the other a presser plate. When the presser plate was brought into action it squeezed that part of the sponge that lay between the two plates. There was no evidence that this mop even came into use. The construction disclosed in the patent showed serious defects. The wringing action would be very inefficient. The only part of the sponge that would be subject to pressure would be that between the backing plate and the presser plate. The part within the holder and the part extending beyond the plates would remain saturated with water which would cause the sponge to rot. There would be no flushing of accumulated dirt out the front of the sponge and by reason of the fact that only about 25 per cent of the sponge content extended beyond the plates the backing plate would scratch the floor. If a mop were made according to the patent it would be useless in practice.

These were the only constructions of which Mr. Webster had any knowledge when he returned to the plaintiff's employ after the war but there were other mops to which Mr. Greenleaf referred. One of these was the Dufold Mop. In this the head plate was in two sections with the cellulose sponge attached to both and the pressure was exerted vertically downward. It was not possible to get a wringing action that would flush the accumulated dirt out. On the contrary, when the downward vertical pressure to wring the

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sponge was exerted it had the effect of folding the back section on the front one with the sponge between them. It was not possible to bring the sections into parallel relationship with one another and consequently the sponge could not be squeezed effectively. Moreover, the bringing of the two sections of the presser plate together caused the sponge to fold together with the result that the squeezing action, instead of flushing the accumulated dirt out of the sponge, had the effect of trapping it between its folds.

Mr. Greenleaf also referred to German Patent No. 611,571, dated March 30, 1935, issued to Theodor Sendler. The mop covered by this patent was a back presser mop in that the presser plate was hinged to the back of the head plate, but the hinge was below the head plate so that it would tend to scrape the floor. Moreover, the angle between the head plate and the presser plate, which was almost flat, was acute so that when the presser plate was swung into action it would not be possible to subject the whole sponge to uniform and complete wringing. Moreover, the action of the presser plate would force the sponge forward so that the front part of it would extend beyond the head plate and would not be compressed. In the result the Sendler mop would not produce an effective flushing and wringing action. There was the further disadvantage that it was complicated in design and difficult and costly to produce.

Finally, reference was made to United Kingdom Patent No. 411,314, dated June 7, 1934, issued to H. Blume. The drawings show that the presser plate moved down on the sponge in a vertical plane and in squeezing the sponge trapped the accumulated dirt. Moreover, much of the sponge would be left uncompressed. In addition, the construction was complicated.

Thus it was clear that the prior art did not show any mop that gave a complete flushing and wringing action and the known mops had the defects that I have mentioned. The evidence discloses that the inventors, first Mr. Greenleaf and then Mr. Webster as well, deliberately set themselves the task of devising a mop that would give a complete flushing and wringing action and, at the same time, be free from the defects of the known mops. Mr. Greenleaf first showed an interest in the subject in 1937 when he looked at

certain patents. The construction disclosed by them showed certain faults. Rubber sponges were used, the hinging connections were complicated and difficult, the hinges scratched furniture, the action of the presser plate distorted the sponge, the flushing action was inefficient and the wringing of the sponge was incomplete. In 1939 the study of the subject was suspended until after the end of the war and not renewed until 1947. Up to that time, as I understand the evidence, the only specific decision made was to discard the use of a rubber sponge and settle upon a cellulose one because of its greater compressibility and absorptive capacity. In 1947, when Mr. Webster had returned to the plaintiff's employ, the study of the subject was renewed. This became intensive in 1948. Some 166 patents were examined and the faults and defects of all known mops were ascertained. The inventors then sought to devise a mop that would flush the accumulated dirt out the front face of the mop, effect a complete wringing of the sponge without rupturing or tearing it, function without scratching furniture or the floor and be simple in design and inexpensive to make. This was the problem to which they set themselves. Models of mops were made from time to time as experiments were made. The evidence is that the experiments were completed about September 15, 1948, and the application for patent made on December 30, 1948. The patent was issued on August 23, 1949, a petition for re-issue was made on September 23, 1951, and the patent was re-issued on September 25, 1951. Manufacture of the mop was started in February, 1949, and it was first put on the market in April, 1949.

I shall now set out what the inventors did to solve the problem before them without attempting to enumerate their steps in the order of their occurrence. They hinged the presser plate at the back of the presser plate in order to have a back to front pressing action so that the reservoir of water in the sponge would be able to flush the dirt accumulated by the sponge during the mopping operation out the front face of the sponge instead of being forced back into it as in the case of the front presser mops such as the Miracle Mop or being trapped inside it as in the case of the vertical pressure Dufold Mop. Then because of the high

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compressibility of the cellulose sponge they hinged the presser plate above the head plate so that when the mop was being pushed forward the presser plate would not scratch the floor. The adoption of the cellulose sponge with the capillary action of water in it made complete wringing of it essential. Even if only 5 or 10 per cent of the water was left in the sponge it would tend to mildew and rot. Consequently, the wringing action must be such that it would not only flush the accumulated dirt out the front face of the sponge but would also wring it so that it would be as dry as possible. To accomplish this complete wringing the inventors did three things. In the first place, they bent the edge of the presser plate that was near the hinge downward, the bent down part being called the pivot connecting portion, so-called because it connected the hinge with the sponge-pressing portion of the presser plate. The angle between the pivot connecting portion and sponge pressing portion was obtuse but approximately a right angle. They also bevelled the sponge block rearwardly so that it was thinner at the back than at the front. And, finally, they bent the front edge of the presser plate downward to form a lip. The combined effect of providing the pivot connecting portion and bevelling the sponge was that as the progressive flushing of accumulated dirt out the front face of the sponge continued as the presser plate was swung into action the sponge pressing portion of the presser plate finally became practically parallel with the head plate and it was possible to subject all the content of the sponge between the head plate and the sponge pressing portion of the presser plate to uniform and complete compression without rupturing it or pulling it away from its adhesion to the head plate. This uniform and complete compression of the sponge was not possible either with a front to back presser or even with a back to front presser where the angle between the presser plate and the head plate was acute. Nor would the wringing be as efficient if the sponge block was not bevelled. The provision of the lip was an additional contribution to complete wringing. As the back to front pressing action proceeded the pressure on the sponge tended to cause the front of it to extend slightly beyond the two plates so that the extended part escaped the final full pressure. The purpose of the lip was to gather

in this extended part and contain it within the area of uniform and complete compression. Finally, by having the sponge and its adhering fabric extend slightly beyond the edges of the head plate the inventors provided a cushion or buffer when the mop was pushed against furniture or other wooden surfaces.

The invention as disclosed by the specification is a combination of elements and an arrangement of parts to accomplish certain results. I have already described the several elements in it, namely, the head plate, the handle secured to it, the bevelled sponge and the presser plate, the last named consisting of the pivot connecting portion, the sponge pressing portion and the lip, with the angle between the pivot connecting portion and the sponge pressing portion being obtuse but approximately a right angle and the presser plate being hinged at the back of the head plate and above it. The invention is a combination of these elements with the parts arranged to produce the following results: firstly, a progressive flushing of the sponge from back to front by means of the presser plate being positioned at the back of the head plate so that the reservoir of water in the sponge is used to flush the accumulated dirt out its front face; secondly, a complete wringing action by means of the hinge between the presser plate and the head plate being positioned above the head plate and the pivot connecting portion being positioned so that the initial point of contact between the presser plate and the sponge is at its back bottom corner and the presser plate being disposed so that in the final wringing position it will be substantially parallel with the head plate and the provision of a lip at the front edge of the presser plate to gather in the sponge and subject all of it to wringing; thirdly, the prevention of rupture of the sponge by bevelling it to the back so that as the presser plate is swung into position there will not be a large volume of sponge at the back to be forced out of position; fourthly, the prevention of scratching the floor or furniture by positioning the hinge above the head plate; and, fifthly, a reduction in the cost of manufacture by reason of simplification of construction.

The utility of the invention is not open to dispute. The inventors had before them the objective of devising a mop that would give a perfect flushing and wringing action.

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Whether such a result has been achieved or not need not be decided but the fact is that the plaintiff's mop did give a more effective flushing and wringing than any other mop had done and was substantially free from the defects to which other mops were subject. This is established by the evidence of Mr. Greenleaf and Mr. Webster and was admitted by Mr. F. W. Mallory, the defendant's secretary-treasurer, on his examination for discovery. He agreed that the features of the plaintiff's mop combined to make an efficient mop, more efficient than anything he had seen before.

Here I should refer to the fact that there is no attack on the sufficiency of the disclosures in the specification. The invention has been correctly and fully described, as required by s. 35 of *The Patent Act, 1935*, and that is also true of its operation and use as contemplated by the inventors. The specification is addressed to persons skilled in the art. In my opinion, such persons could not have any doubt about the invention that was disclosed in the specification. It was the one described by counsel for the plaintiff as I have sought to set it out.

But, of course, it will not avail the plaintiff that the inventors made the invention so described or that there was a correct and full description of it and its operation or use in the specification, unless it is defined in one of the claims for it is only the invention as claimed that falls to be considered. It may well happen that an inventor has made a useful invention but loses the benefit of his contribution to the public by reason of the fact that he has not properly described his invention or has not validly claimed it. There is an outstanding illustration of this fact in the case of *Minerals Separation North American Corporation* v. *Noranda Mines, Ltd.* (1). Consequently, it is necessary to consider the claims. The claims in suit are claims 1 to 6 inclusive, 8 and 9 which read as follows:

1. A mop including a handle and a head, a compressible mopping element releasably secured to said head, and a presser plate hinged at the rear of said head and normally held above and in angular relation to said mopping element and swingable to compress said mopping element progressively from back to front to flush said mopping element towards the front.

(1) [1947] Ex. C.R. 306; [1950] S.C.R. 36; (1952) 69 R.P.C. 81.

2. A device as claimed in claim 1 in which the hinge of said presser plate is arranged above the mop head.

3. In a mop including a handle and a head secured to said handle and presenting a front edge forward of said handle in relation to direction of mop advance under normal mopping action, and a rear edge at opposite side of said handle, a compressible sponge block releasably secured to said head and presenting at the front of said head a dirt accumulating face of substantial depth and at the rear of said head a rear face, and having a bottom working face presenting at the rear an edge displaced below said head, a presser element pivoted adjacent the rear edge of said head to swing about an axis fixed relative said head and above said bottom working face and at right angles to said handle said presser element having a pivot connecting portion and a sponge pressing portion in angular relation to said pivot connecting portion and spaced thereby from said axis a distance less than the thickness of said sponge at the rear face, and an operating handle for said presser element to swing said element against the undersurface of said sponge to compress said sponge against said head with said sponge pressing portion first contacting said sponge at said rearward edge below said head and displacing said latter edge forwardly and progressively compressing said sponge from rear to front while leaving the front face of said sponge substantially unobstructed to flush dirt accumulations out said front face.

4. In a mop including a handle and a head secured to said handle and presenting a front portion forward of said handle in relation to direction of mop advance under normal mopping action, and a rear portion at opposite side of said handle, a compressible sponge block releasably secured to said head and presenting at the front of said head a front dirt accumulating face and at the rear of said head a rear face, and having a bottom working face presenting at the rear an edge displaced below said head, a presser element pivoted at the rear of said head adjacent the head thereof to swing initially rearwardly of said handle about an axis fixed relative said head and above said bottom working face and at right angles to said handle against the undersurface of said sponge to compress said sponge against said head while leaving the forward face of said sponge substantially unobstructed, and means maintaining said presser element in an upright mopping position adjacent said handle, said presser element being bent to provide an obtuse angle rearwardly of said handle when in said upright mopping position adjacent the pivot axis and at a distance therefrom less than the thickness of said sponge at the rear face whereby upon swinging said presser element rearwardly said sponge is engaged initially at the rear lower edge below said head and compressed progressively from back to front to force water stored in reservoir in said sponge out said substantially unobstructed forward face.

5. A device as claimed in claim 4 in which said presser element has a right angularly turned forward edge, to engage said front sponge face following initial compression of the rear of said block to maintain said block from excessive forward displacement.

6. In a mop including a handle and a head, a compressible sponge block bevelled rearwardly to have a thickness at the rear less than the thickness at the front releasably secured to said head, a presser element pivoted at the rear of said head adjacent the edge thereof to swing initially rearwardly about an axis fixed relative said head against the undersurface of said sponge to compress said sponge against said head while leaving the forward face of said sponge substantially unobstructed,

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means maintaining said presser element in an upright mopping position against said handle, and an operating handle for said presser element, said presser element being bent to provide an obtuse angle rearwardly of said mop handle when in said upright mopping position adjacent the pivot axis and at a distance therefrom less than the thickness of said sponge at the rear whereby upon swinging said presser element rearwardly said sponge is engaged initially at the rear lower corner and compressed progressively from back to front to force water stored in reservoir in said sponge out substantially unobstructed forward face.

8. A mop including a handle and a head secured to said handle and presenting a front portion forward of said handle in relation to direction of mop advance under normal mopping action and a rear portion at opposite side of said handle, a sponge block releasably secured to said head at the underside thereof and having a front and rear in respect to said head and a bottom working face presenting at the rear an edge displaced below said head, a presser plate having a pivotal connection at the rear of said head to swing about an axis fixed relative said head and above said bottom working face and substantially at right angles to said handle, and means to maintain said presser plate in a mopping position above and in angular relation to said block, the relative disposition of said pivotal connection and presser plate positioning said plate upon swinging movement from said mopping position to first engage only the rearward lower block edge below said head, and to thereafter compress said block in a direction forwardly and against the underside of said head progressively from rear to front of said head and including the front of said block to flush said block towards the front.

9. A mop including a handle and a head secured to said handle and presenting a front portion forward of said handle in relation to direction of mop advance under normal mopping action and a rear portion at opposite side of said handle, a sponge block releasably secured to said head at the underside thereof and having a front and rear in respect to said head and a bottom working face presenting at the rear an edge displaced below said head, said block having a maximum vertical dimension at the front, a presser plate having a pivotal connection at the rear of said head to swing about an axis fixed relative said head and above said bottom working face and substantially at right angles to said handle, and means to maintain said presser plate in a mopping position above and in angular relation to said block, the relative disposition of said pivotal connection and presser plate positioning said plate upon swinging movement from said mopping position to first engage only the rearward lower block edge below said head, and to thereafter compress said block in a direction forwardly and against the underside of said head progressively from rear to front of said head and including the front of said block to flush said block towards the front.

On the argument it became clear that claim 6 is the important one. This is the claim on which counsel for the plaintiff primarily relied. If it should fall it would seem unlikely that the validity of the other claims could be established. On the other hand, if it stands the patent is valid and it will not be necessary to consider, in this case at any rate, the validity of the other claims, even if some of them may also be valid.

Two attacks on the patent were made by counsel for the defendant. It was submitted that it was invalid for anticipation and for lack of subject matter. I shall deal first with the defence of anticipation. In support of it counsel relied entirely on the Sendler patent. It is, therefore, the only prior publication that need be considered. If it was not anticipatory of the plaintiff's invention the defence of anticipation fails.

It is admitted, of course, that several elements in the combination constituting the invention were old. For example, the use of cellulose sponge was not new, nor was the bevelling of the sponge. And there was the back to front presser plate in the Sendler patent. But the question for consideration is not whether the elements were new but whether the combination of elements with its arrangement of parts was novel or was anticipated by the Sendler patent.

The requirements that must be met before an invention should be held to have been anticipated by a prior patent or other publication have been discussed in many cases. In *The King* v. *Uhlemann Optical Co.* (1) I summarized the effect of the leading decisions on the subject and made the following statement:

> The information as to the alleged invention given by the prior publication must, for the purposes of practical utility, be equal to that given by the subsequent patent. Whatever is essential to the invention or necessary or material for its practical working and real utility must be found substantially in the prior publication. It is not enough to prove that an apparatus described in it could have been used to produce a particular result. There must be clear directions so to use it. Nor is it sufficient to show that it contained suggestions which, taken with other suggestions, might be shown to foreshadow the invention or important steps in it. There must be more than the nucleus of an idea which, in the light of subsequent experience, could be looked on as the beginning of a new development. The whole invention must be shown to have been published with all the directions necessary to instruct the public how to put it into practice. It must be so presented to the public that no subsequent person could claim it as his own.

And, at page 158, I made particular reference to the statement of Lord Dunedin in *Pope Appliance Corporation* v. *Spanish River Pulp and Paper Mills Ld.* (2), when he put the test as follows:

> Would a man who was grappling with the problem solved by the Patent attacked, and having no knowledge of that patent, if he had had the alleged anticipation in his hand have said, "That gives me what I wish"?

(1) [1950] Ex. C.R. 142 at 157. (2) (1929) 46 R.P.C. 23 at 52.

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and later, at page 56:

> Does the man attacking the problem find what he wants as a solution in the prior so-called anticipations?

It is to be assumed, of course, that the man to whom Lord Dunedin referred was a person skilled in the art to which the alleged anticipating patent related and had the common general knowledge of that art. The test is whether the said patent gave such a man what he wished and whether he could find in it a solution of the problem with which he was grappling.

If the test to which I have referred is applied to the question whether the Sendler patent was an anticipation of the invention covered by the patent in suit, as defined in claim 6, it is obvious that it was not. The claim does not read on Sendler and could not have been included in the Sendler patent. It could not have given the person grappling with the problem what he wished and he could not have found a solution of his problem in it. Even if the bevelling of the sponge was old and the idea of the back to front presser was disclosed by the Sendler patent the idea of combining the bevelled sponge with a back to front presser was new. And if there should be any doubt of that the idea of adding to this combination the provision of the pivot connecting portion and positioning the hinge above the head plate was certainly new. I am assuming, of course, that claim 6 covers the combination I have referred to. On that assumption I find very important differences between the Sendler invention and the invention defined in claim 6. In the first place, the latter is simpler in construction. This, by itself, would be sufficient to distinguish it. Moreover, the Sendler patent did not have a bevelled sponge or a pivot connecting portion. And the arrangement of the elements was different. For example, the hinge in the Sendler patent was below the head plate, the presser plate was straight and the angle between the head plate and the presser plate was acute so that it was not possible to bring the two plates into parallelism and accomplish the progressive and complete wringing achieved by the plaintiff's invention. The differences were so great that it could not reasonably be said that claim 6 had been anticipated by

the Sendler patent. Indeed, counsel for the defendant did not attempt to do so. He agreed that the Sendler patent could not be regarded as anticipatory of claim 6. His contention of anticipation was confined to other claims. For example, he submitted that Sendler read expressly on claims 1 and 8, that Sendler was also anticipatory of claim 9 in that the only difference between it and Sendler was the use of the bevelled sponge and that, consequently, Sendler gave a person skilled in the art what he wished since such person would know about the bevelled sponge. The contention, therefore, was that since claim 9 was merely a combination of Sendler plus the known bevelled sponge Sendler was really anticipatory of it. In view of the conclusion to which I have come regarding the validity of claim 6 I need not deal with the important question involved in the contention relating to the anticipation of claim 9 by Sendler nor discuss the difference between common general knowledge and public knowledge beyond making the observation that there was no evidence that the use of a bevelled sponge was part of the common general knowledge of the art. Nor need I deal with counsel's comments with regard to claims 2, 3 and 4. I shall refer to claim 5 later. Under the circumstances, I find that the invention covered by claim 6 was not anticipated by the Sendler patent and that the defence of invalidity for anticipation fails.

The attack on the patent on the ground that it is invalid for lack of subject matter was, in a sense, a twofold one. It was contended, for example, that claim 6 does not include all the elements of the combination disclosed in the specification and does not, therefore, accomplish the results sought by the inventors with the result that it is broader than their invention and bad on that account. Then it was urged that even if claim 6 is co-terminous with the invention, that is to say, that it does define the invention disclosed by the specification it is invalid for lack of subject matter in that if there was an advance over the prior art it was an obvious workshop improvement and did not involve the exercise of any inventive ingenuity. I shall deal with the charge of lack of inventiveness first.

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Counsel for the plaintiff contended that the prior art did not show the progressive back to front flushing action accomplished by the invention, that the problem of complete wringing was not solved until the inventors solved it, that there was less risk of scratching the floor and furniture in the case of the plaintiff's mop than with any prior mop and less likelihood of rupturing the sponge and that economy of manufacturing had been achieved. He submitted that a combination that produced these advantages over what was previously known indicated an exercise of inventive ingenuity sufficient to support the patent.

I had occasion in *The King* v. *Uhlemann Optical Co.* (1), to consider whether an advance made in the art there under discussion was an obvious workshop improvement or involved the exercise of inventive ingenuity. At page 161, I made the following statement:

> There is a presumption of validity in favor of the patent by reason of its issue and the onus of proving that it is invalid for lack of invention is on the person attacking it, . . . The onus is not an easy one to discharge. No one has really succeeded in defining, apart from the statutory definition, the difference between an advance that is obvious as a workshop improvement and one that involves inventive ingenuity. One of the difficulties is that there is no objective standard of invention. What one person might regard as inventive another would consider as obvious.

While it is true that thus far no one has been able to lay down a precise rule for distinguishing between a patentable advance in an art and an obvious workshop improvement and the determination may be a subjective one in view of the lack of an objective standard the Court is not left wholly dependent on a subjective approach. The statutory presumption of validity of the patent in favour of the patentee and his assigns cannot be too strongly stressed. S. 47 of *The Patent Act, 1935,* S. of C. 1935, c. 32, provides:

> 47. Every patent granted under this Act shall be issued under the signature of the Commissioner and seal of the Patent Office. The patent shall bear on its face the date on which it is granted and issued and it shall theerafter be *prima facie* valid and avail the grantee and his legal representatives for the term mentioned therein, . . .

This statutory presumption of validity is of considerable importance to the Court. Instead of having to determine that the invention covered by the patent in suit does not

(1) [1950] Ex. C.R. 142.

involve the exercise of inventive ingenuity, which is presumed until the contrary is shown, its task is the simpler one of deciding whether the person attacking the patent has succeeded in showing that the invention covered by it was merely an obvious workshop improvement.

Consequently, there is help to be found in decisions indicating what should not be considered as a negation of inventive ingenuity. As examples of what I have in mind I refer to decisions to the effect that the simplicity of a device is not proof that it was obvious and that inventive ingenuity was not required to produce it. This negation of a common attack on the validity of a patent is found in many cases. An early leading statement was made in *Vickers, Sons & Co. Ltd.* v. *Siddell* (1), where Lord Herschell said, at page 304:

> If the apparatus be valuable by reason of its simplicity, there is a danger of being misled by that very simplicity into the belief that no invention was needed to produce it. But experience has shown that not a few inventions, some of which have revolutionized the industries of this country, have been of so simple a character that when once they were made known it was difficult to understand how the idea had been so long in presenting itself, or not to believe that they must have been obvious to every one.

And there was the statement of Lord Davey in *Patent Exploitation, Ld.* v. *Siemens Brothers & Co., Ld.* (2):

> It may be that the invention is a small one, but slight differences in these cases sometimes produce large results.

A similar opinion was expressed in *Giusti Patents and Engineering Works, Ltd.* v. *Rees* (3), where it was held that a patent for an invention, however simple, if it was not obvious and not a mere workshop improvement on a well-known tool, should be supported. In *Pope Appliance Corporation* v. *Spanish River Pulp and Paper Mills Ld.* (4), Viscount Dunedin put the matter positively when he said, at page 55:

> It must also be considered that there may be invention in what, after all, is only simplification.

And in *Electrolier Manufacturing Co. Ltd.* v. *Dominion Manufacturers Ltd.* (5), Rinfret J., as he then was, said of the device there in question, at page 441:

> Though simple, his device cannot be said to have been obvious.

(1) (1890) 7 R.P.C. 292.
(2) (1904) 21 R.P.C. 541 at 549.
(3) (1923) 40 R.P.C. 206.
(4) (1929) 46 R.P.C. 23.
(5) [1934] S.C.R. 436.

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In *The Rheostatic Co. Ltd.* v. *Robert McLaren & Co., Ltd.* (1), The Lord Justice Clerk (Aitchison) said, at page 117:

> Again the simplicity of the device does not exclude invention; on the contrary inventive ingenuity may, and often does, consist in finding a simple and, when discovered, the apparently obvious solution of the problem.

I might also in this connection refer to the statement of Lord Russell of Killowen in *Non-Drip Measure Co. Ld.* v. *Stranger's Ld., et al.* (2):

> Whether there has or has not been an inventive step in constructing a device for giving effect to an idea which when given effect to seems a simple idea which ought to or might have occurred to anyone, is often matter of dispute. More especially is this the case when many integers of the new device are already known. Nothing is easier than to say, after the event, that the thing was obvious and involved no invention.

And Lord MacMillan's statement in the same case, at page 143:

> It might be said *ex post facto* of many useful and meritorious inventions that they are obvious. So they are, after they have been invented.

Thus it seems to me that when there has been a substantial and useful advance over the prior art the Court should not give effect to an attack on the validity of the patent covering it on the ground that the advance was an obvious workshop improvement unless it is clearly so. In view of the statutory presumption in favour of the validity of the patent the Court should not make the onus of showing its invalidity an easy one to discharge.

Apart from the presumption of validity to which I have referred there is confirmation of what I have said in the frequently repeated statement that a mere scintilla of inventiveness is sufficient to support a patent.

In the present case I have no hesitation in expressing the opinion that the plaintiff's mop showed an advance over the prior art that was not an obvious workshop improvement. On the contrary, the combination which the inventors finally worked out was the result of careful analysis of the prior art and thoughtful study and experimentation. It enabled them to produce a more efficient mop than any mop previously in existence. In my opinion, the combination involved a substantial exercise of inventive ingenuity.

(1) (1936) 53 R.P.C. 109. (2) (1943) 60 R.P.C. 135 at 142

Certainly, the defendant has failed to show that the advance made by it was an obvious workshop improvement. In my opinion, the defence of invalidity for lack of inventiveness plainly fails.

In view of this finding I need not deal with the evidence of commercial success adduced on behalf of the plaintiff beyond saying that, in my opinion, it does not contribute anything to my finding. The circumstances under which I found commercial success as evidence of invention in the *Uhlemann* case (*supra*) and in *The King* v. *American Optical Co.* (1), do not exist in the present case.

I shall now consider the contention that claim 6 defined an invention that is broader than the one described in the specification. This, in my opinion, is the most important question in the present case and it is not free from difficulty. It was agreed that claim 6 is the narrowest of the claims. Counsel for the plaintiff pointed out that it makes no reference to the lip on the front of the presser plate, claim 5 being the only one that does so. That is true. Two other complaints were made. The first was that claim 2 is the only claim that requires the hinge between the head plate and the presser plate to be above the head plate, that there is no similar requirement in claim 6 and that, consequently, it is not limited to the hinge being above the head plate but extends to the positioning of it below the head plate. In this connection reference was made to the statement of Mr. Webster that effective wringing of the sponge would not be possible if the hinge was below the head plate and the evidence that in such event the mop would scratch the floor. Therefore, it was submitted, claim 6 covers something that will not accomplish one of the purposes sought by the inventors, namely, effective wringing of the mop, and will defeat another purpose, namely, the avoidance of scratching the floor. The other charge was that in claim 6 the obtuse angle there referred to is not limited to an angle that is approximately a right angle and that, consequently, it extends to any obtuse angle, that is to say, any angle over 90 and under 180 degrees, and that if a very obtuse angle is used the presser plate will not first impinge on the back

(1) [1950] Ex. C.R. 344 at 367.

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bottom corner of the sponge and it will not be possible to bring the presser plate into parallelism with the head plate to accomplish the uniform and thorough wringing of the sponge that the inventors sought, and were able, to accomplish. Put briefly, the argument was that since claim 6 does not include the lip, does not require the hinge to be above the head plate and does not limit the obtuse angle to substantially or approximately a right angle it defines a combination with an arrangement of parts that accomplishes only two of the results accomplished by the inventors as disclosed in the specification and fails to accomplish others, namely, the uniform and complete wringing of the sponge and the avoidance of scratching the floor. Consequently, it was submitted, the invention defined in claim 6 is broader than the one described in the specification and invalid on that account.

Before I deal with these complaints I should refer briefly to certain cardinal principles of construction of claims in a patent. During the course of the argument I commented adversely on the language or, more precisely, the jargon in which the claims were expressed. There was, it seems to me, a difference between the language of the disclosures of the specification and the jargon of the claims. But while I made this adverse comment, it is essential that the Court should be fair to the inventors. As I said in the *Minerals Separation* case (*supra*) there may be faults of expression in a patent specification but they do not necessarily affect the validity of the patent for a patent specification is not an exercise of composition to be judged by the canons of grammar or rhetoric. The specification is addressed to persons skilled in the art and the test of the correctness of the specification, including the claims with which it ends, is whether such persons, having the common knowledge of the art, would know without doubt exactly what the invention, as defined in the claims, is. As I said in the *Mineral Separations* case (*supra*) the proper attitude of the Court in construing a specification was well described by Sir George Jessel, M.R. in *Hinks & Son* v. *Safety Lighting Co.* (1), when he said that it should be construed "fairly, with a judicial anxiety to support a really useful invention if it

(1) [1876] Ch. D. 607 at 612.

can be supported on a reasonable construction of the patent." The need for fair construction was stated by Lord Parmoor in the House of Lords in *Natural Colour Kinematograph Co. Ltd.* v. *Bioschemes Ld.* (*re G. A. Smith's Patent*) (1). The Supreme Court of Canada has shown the same attitude. In *French's Complex Ore Reduction Co.* v. *Electrolytic Zinc Process Co.* (2), Rinfret J., as he then was, approved Sir George Jessel's statement and said that the "specification should not be construed astutely". And in *Baldwin International Radio of Canada Ltd.* v. *Western Electric Co. Inc. et al.* (3), Rinfret J. said that the respondents were entitled to have the claims interpreted "by a mind willing to understand, not by a mind desirous of misunderstanding". And in *Western Electric Co.* v. *Baldwin International Radio of Canada* (4), Duff C.J. pointed out that where the Courts have been satisfied that there was a meritorious invention they have resorted to the maximum *ut res magis valeat quam pereat,* and said:

> And, where the language of the specification, upon a reasonable view of it, can be read as to afford the inventor protection for that which he has actually in good faith invented, the Court, as a rule, will endeavour to give effect to that construction.

It is in the light of these admonitions that I approach the questions under review.

There are, I think, valid answers to the criticisms of claim 6. I shall deal first with the position of the hinge. It would, of course, have been much simpler if the draftsman had expressly stated, as he did in claim 2, that "the hinge of said presser plate is arranged above the mop head", but I am of the view that claim 6 puts a limitation on the position of the hinge in such a way as to exclude a hinge positioned below the head plate. In his written argument counsel for the plaintiff submitted that there are factors in the claim itself that limit the location of the hinge to a position substantially in line with the head plate or above it and exclude a position below it. These factors, expressed in the jargon of the claim, are as follows:

1. Presser element pivoted at the rear of said head *adjacent the edge thereof.*

(1) [1915] R.P.C. 256.
(2) [1930] S.C.R. 462 at 470.
(3) [1934] S.C.R. 94 at 106.
(4) [1934] S.C.R. 570 at 574.

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2. Means maintaining said presser element in an upright mopping position against said handle.

3. Said presser element being bent to provide an obtuse angle rearwardly of said mop handle when in said upright mopping position *adjacent the pivot axis.*

4. And at a distance therefrom less than the thickness of said sponge at the rear.

And it was submitted that if the hinge position was below the head plate the presser plate could not be brought up against the mop handle unless either the hinge position is moved rearwardly of the head plate away from a point *adjacent the rear edge,* contrary to the limitation of the claim, or the presser plate is deformed or bent backwards around the back edge of the head plate, in which case the distance of the angle from the hinge would be greater than the thickness of the sponge at the rear. But by having the obtuse angle *adjacent the pivot axis* and the distance between this angle and the hinge less than the thickness of the sponge at the rear and by having the position of the angle with the presser plate in an upright non-wringing position rearwardly of the mop handle and the presser plate against the mop handle it becomes clear that the positioning of the hinge *adjacent the rear edge* means positioning it above the head plate or at least substantially in line with it. Thus, when the position of the hinge is at a point with relation to the head plate such as to allow the presser plate with an obtuse angle *adjacent the pivot axis* (at a distance therefrom less than the thickness of the sponge at the rear) to swing against the mop handle without being obstructed by the head plate and with the position of the obtuse angle being rearwardly of the mop handle then the hinge is positioned *adjacent the rear edge* of the head plate as defined in the claim. The lack of obstruction of the presser plate by the head plate happens only if the hinge position is above the head plate or substantially in line with it. If the hinge is below the head plate the head plate offers an obstruction that will prevent the presser plate from moving up against the mop handle unless the presser plate is deformed. Thus, the limitations of the claim exclude the positioning of the hinge below the head plate.

The attack on claim 6 on the ground that it does not limit the obtuse angle to an angle that is approximately or substantially a right angle was met by two answers, the first being found in the disclosures of the specification and the drawings and the second in the claim itself. Counsel for the plaintiff submitted that the degree of obtuseness of the angle is defined in the specification and drawings and that the claim should be read accordingly. The specification contains the following statement:

> As shown in Figures 2 and 3, the presser plate is bent or curved adjacent to but spaced from the longitudinal hinged edge *through approximately a right angle* to provide a wide portion 20' for engaging the undersurface 7 of the mopping element when the presser plate is swung from the position of Figure 2 to the position of Figure 3, the forward edge 20' of the plate being bent upwardly to constrain the mopping element when pressing.

And Figures 2 and 3 of the drawings show that the obtuse angle between the pivot connecting portion of the presser plate and the sponge pressing portion is just slightly more than a right angle or, as the specification puts it, "approximately a right angle". Exception to this reading of the claim was taken by counsel for the defendant on the ground that the meaning of the word "obtuse" is clear and that in the case of clear words it is not permissible to read into them matter from the specification. But, in my opinion, it is permissible in the present case to look to the specification and the drawings for the purpose of construing the meaning to be assigned to the word "obtuse" as used in the claim. In my judgment, there is support for this view in *Raleigh Cycle Co. Ld. et al.* v. *H. Miller and Co. Ld.* (1), where the meaning to be assigned to the phrase "which gives a steady light even at low speeds" in one of the claims was considered. There it was held, *inter alia,* that resort might be had to the description in the specification and accompanying drawings to limit what would otherwise have been too broad a claim. And counsel for the plaintiff also relied on *British Thomson-Houston Co. Ld.* v. *Corona Lamp Works* (2), where the meaning of the term "of large diameter or cross section" as applied to the filament of an incandescent lamp was discussed. In the present case I am of the view that it is permissible to look to the specification and the drawings to determine the degree of obtuseness of

(1) (1948) 65 R.P.C. 141.
(2) (1922) 39 R.P.C. 49.

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the angle referred to in the claim. It is, I think, obvious that no one could reasonably assume that the term extended to an obtuse angle of say 179 degrees. It was plainly intended that there should be some limitation of the obtuseness. That being so, the limitation intended by the inventors is found in the extract from the specification and the drawings referred to by counsel. Any person skilled in the art could not fail to read the claim with that limitation. He could not fail to understand that the word obtuse was used in the sense that the angle should be obtuse rather than acute, that is to say, larger than a right angle rather than smaller and, consequently, approximately a right angle.

But even if resort to the specification and the drawings for the purpose of defining the degree of obtuseness of the angle is not admissible it does not greatly matter for, in my opinion, the degree of obtuseness of the angle is defined in the claim itself by the following limitations, namely, firstly, the obtuse angle of the presser plate, that is to say, the angle between the pivot connecting portion and the sponge pressing portion must be located rearwardly of the mop handle when the presser plate is in its upright position; secondly, the obtuse angle must be *adjacent the pivot axis* and at a distance from it of less than the thickness of the sponge in the rear, that is to say, the bevelled sponge; and, thirdly, the obtuse angle, located as stated, must be of such a degree that when the presser plate is swung into position the sponge is engaged initially at its back bottom corner and, in the words of the claim, "compressed progressively from back to front to force water stored in reservoir in said sponge out said substantially unobstructed forward face". Under these circumstances, the obtuseness of the angle can be only slightly more than a right angle. If it is more than "approximately a right angle", as stated in the specification and illustrated in the drawings, it cannot meet the limitations of the claim. Moreover, since the position of the hinge is fixed, as I have found it to be, it follows, of necessity, that if the presser plate is to engage the sponge "initially at the rear lower corner" so that the sponge is "compressed progressively from back to front" the obtuse

angle in question must be an angle of approximately 90 degrees. That being so, the charge that the claim fails to define the obtuse angle as approximately a right angle and that, consequently, it extends to an obtuse angle even up to an angle less than 180 degrees falls. Under the circumstances, I find that claim 6 defines the invention substantially as the one described in the specification less the lip, which is covered by claim 5.

Accordingly, I find that claim 6 is valid. I am also of the view that claim 5 is valid for it differs from claim 6 only in the fact that it does not include the bevelled sponge but does include the lip. I need not go further.

There is one other matter to which I should refer. One of the paragraphs in the defendant's amended particulars of objection reads as follows:

> 1. (*j*) Nathaniel B. Greenleaf and Leonard C. Webster, named as the inventors in said patent No. 477,364, are not the first ones to conceive of the alleged invention claimed in the claims in issue, but Alfred L. LeFebvre was. An application for a Canadian patent disclosing a mop similar to the alleged invention of the said Nathaniel B. Greenleaf and Leonard C. Webster was filed in the Canadian Patent Office on the 4th of April, 1950, under Serial No. 599,415 upon which conflict proceedings should have been declared by the Patent Office, and the subject matter of the said application by LeFebvre was known by LeFebvre before Greenleaf and Webster devised the alleged invention to Patent 477,364.

It should be remembered that the patent in suit was a re-issued patent. The petition for re-issue was made on September 23, 1951, and the patent was re-issued on September 25, 1951. The validity of the re-issue was not challenged. In the course of the trial and subject to the objection of counsel for the plaintiff I allowed the patent application of A. F. LeFebvre, dated April 5, 1950, Serial No. 599,415 to be filed as Exhibit H. But this, of course, does not prove any date of invention by Mr. LeFebvre. Other attempts to prove such date were disallowed by me on the ground that the evidence by which it was sought to prove it was hearsay and inadmissible. The result was that counsel for the defendant admitted that he had not been able to prove prior invention by LeFebvre.

It appears that in the petition for re-issue the disclosures of the original application were untouched but that the claims, except claims 1 and 2, were altered. Counsel for the defendant sought to file Mr. Greenleaf's application for

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his United States patent, No. 2,515,403. It was stated that the petition for re-issue was based upon the proceedings on the United States patent and argued that the applicants for the patent had really brought the United States prosecution into the Canadian one. Objection was taken to this proposed evidence on the ground that what happened in another country under a different system of law could not affect the validity or invalidity of the claims in a Canadian patent. I ruled that the objection was well taken and the proposed evidence inadmissible. Counsel for the defendant also sought to adduce evidence of a declaration of interference by the United States Patent Office between Mr. Greenleaf's United States patent and Mr. LeFebvre's application. I ruled that this was irrelevant. Counsel for the plaintiff contended that there was no evidence that conflict proceedings should have been declared by the Patent Office between the patent in suit and the LeFebvre application and further that no conflict could have been declared since the petition for re-issue was not an application. I agree with this contention. Under the circumstances, I am now of the view that I should have refused to allow the LeFebvre application to be filed as an exhibit. The same is true of the license agreement filed as Exhibit G, excepting article 1, s. 5. But while I now sustain the objection of counsel for the plaintiff, I did not, on the request of counsel for the defendant, go so far as to order the offending evidence and exhibits to be struck from the record. Later, in the course of the argument counsel for the defendant suggested that I should look at the plaintiff's petition for re-issue to see what the patentee said about the invention. I then expressed the opinion that when a patent has been re-issued on a petition for re-issue the Court should look at the re-issued patent only in the light of its disclosures and claims without regard to how any changes came to be made in it as the result of the petition for re-issue.

There remains only the question of infringement. It is clear from observation of the defendant's mop that while there are some structural differences between it and the plaintiff's mop it is strikingly similar. It has similar elements and a similar arrangement of parts. The hinge between the presser plate and the head plate is above the

head plate. There is a pivot connecting portion of the presser plate and the angle between it and the sponge pressing portion is obtuse and slightly greater than a right angle. While the shape of the sponge is not precisely the same as in the plaintiff's mop it is bevelled rearwardly so that it is thinner at the back than at the front. Thus the basic combination that made the plaintiff's invention a novel and inventive one is present in the defendant's mop. It was urged on behalf of the defendant that claim 6 was not infringed because it required that the sponge should be compressed progressively from back to front and the compression effected by the defendant's sponge was not progressive. It was submitted that the compression was first at the back, then on the front and then at the middle and that this was not a progressive compression of the defendant's mop. I was of the view that there was a progressive compression of the sponge, although the progression was not in the same regular manner as in the case of the plaintiff's mop. Another defence was that the compression of the defendant's mop did not extend to the front of the sponge but left a portion of it not completely compressed. I do not consider this difference sufficient to free the defendant. It was also urged that by reason of the manner in which the defendant's presser plate folds the forward edge of the sponge around the front face it could not be said that it was not substantially unobstructed. There are also some structural differences. But while there are these differences they are not sufficient to constitute a basic difference between the defendant's mop and the plaintiff's. On the evidence, I have no hesitation in finding that the defendant's mop was an infringement of the plaintiff's right to the invention defined in claim 6. I need not make any finding regarding claim 5.

There will, therefore, be judgment for the plaintiff for the relief sought by it except as to damages. If the parties are unable to agree on the amount of the damages or the amount of profits, if the plaintiff elects the latter, there will be a reference to the Registrar or a Deputy Registrar and judgment for such amount of damages or profits as

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found in the reference. If there are any difficulties in settling the minutes of judgment the matter may be spoken to. The plaintiff is entitled to costs to be taxed in the usual way.

Judgment accordingly.