1930
Apr. 8.
Apr. 30.

INTERNATIONAL FIRE EQUIPMENT CORPORATION ..... } PLAINTIFF;

vs.

FIREGAS SERVICE LIMITED..... DEFENDANT.

Patent—Infringement—Combination—Ingenuity of invention

Held, that where all the defendant has done was to adopt the plaintiff's combination of materials and device, functioning similarly, producing similar results obtained in a similar manner, with slight mechanical changes, there is no ingenuity of invention; and where in view of the disclosures in plaintiff's patent no ingenuity of invention was required to construct defendant's device, then such latter device is an infringement of the said patent.

ACTION by plaintiff to restrain the defendant from infringing his patent for Fire Extinguishers.

The action was heard before the Honourable Mr. Justice Audette at Ottawa.

R. S. Smart, K.C., for plaintiff.

J. Lorne McDougall for defendant.

The facts are given in the reasons for judgment.

AUDETTE J., now (April 30, 1930), delivered judgment.

This is an action, by the plaintiff company against the defendant, for an alleged infringement of their Canadian Patent No. 283,423, bearing date 18th September, 1928, for "Fire Extinguishers," or rather for a support or bracket of the grenade containing the fire extinguisher, granted to the plaintiff, the assignee of the inventor, Wilhelm B. Bronander.

The grant contained in the patent is for certain new and useful improvements in Fire Extinguishers and relates to "a grenade support."

The invention has for its salient object to provide a support for a grenade so constructed that the grenade can be easily and readily removed therefrom and, furthermore, so constructed and arranged that in case of fire the grenade will automatically drop, break, and dispense the fire extinguishing fluid.

Another object of the invention is to provide a bracket or holder for grenades comprising few parts, and a structure than can be economically manufactured.

Or in other words:

The invention briefly described consists of a grenade support comprising a bracket or plate adapted to be secured to a wall or other sup-

porting structure, a pair of resilient supporting members adapted to embrace the grenade and form the support therefor and means including a fusible element engaging the supporting members and retaining them under tension. In the form of the invention shown, the means for holding or retaining the supporting members under tension is located on the opposite side of the grenade from the bracket or plate on which the members are mounted and when the fusible element melts, the resilient supports spring apart, permitting the grenade to drop. The grenade is preferably formed of glass or other frangible material and is broken when it strikes the floor, thereby freeing the fire extinguishing liquid, such as carbon tetrachloride, contained therein.

The plaintiff charges the defendant of infringing claims 12, 21 and 22, which read as follows, viz:—

12. A grenade support comprising a pair of resilient elements adapted to embrace and support a grenade, and fusible means for holding said elements under tension and in position to support the grenade.

21. A support for fire extinguisher containers comprising a bracket, a pair of container embracing members carried by said bracket, one of said members being movable away from the other member, and fusible means retaining said members against separation.

22. A support for fire extinguisher containers comprising a bracket, a plurality of elements associated with said bracket for embracing and supporting the container from below, said elements being connected by heat controlled means.

This is a small and narrow patent, and there is not on the record a tittle of evidence of any prior art and there is no attack on the validity of the plaintiff's patent.

While one cannot take a patent for a principle alone, a patent may be granted for a principle coupled with a mode of carrying the principle into effect. It is quite apparent that both the plaintiff's and the defendant's devices are built on the same principle. The plaintiff, under his patent, can prevent anyone from using the *same* method of carrying the principle therein described and can also prevent anyone from using the same thing with a colourable difference. *Nicolas,* on Patent Law, 6.

Although much debated at trial, I must find that there is in the defendant's, as in the plaintiff's, two supporting members embracing the grenade, held together by fusing means which separate on the melting of the fuse. In both devices, both embracing members support the grenade. In the defendant's, the grenade rests for the most part on the socket of one member and the bracket being installed in a slanting position the grenade rests also on the other member for that portion which is outside the centre of gravity. The defendant's bracket is not rigid, there is resiliency in

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its supporting members embracing the grenade; there is more resiliency in one of the two members than in the other, but there is resiliency in both.

The defendant has adopted, without invention, the same idea of function and contrivance which is found in the plaintiff's invention, and the adaptation of such function and contrivance to the same class of article, without any new result, cannot constitute invention. The construction and mode of operation of the defendant's device rests on mechanical principles and laws of operation absolutely identical to that of the plaintiff's device and embodies the whole of it with slight unimportant mechanical changes. There is no contrivance or device that is new in the defendant's bracket, nor any new feature, the same feature having been previously obtained in the plaintiff's bracket. Practically the same specific arrangement of elements is to be found in both brackets. There is no invention in the defendant's bracket and if there is no invention there is infringement. All the defendant has done was to adopt the plaintiff's combination of materials and device, functioning similarly, producing similar results obtained in a similar manner, with slight mechanical changes, without invention.

The defendant would not blunder to the extent of copying servily the plaintiff's bracket, what he has done was to follow as closely as a mechanic might suggest, with the same result, without invention and improvement, the plaintiff's device.

And paraphrasing the holding in *The American Dunlop Tire Company* v. *The Anderson Tire Company* (1), I find that the defendant's bracket, which obtained no improvement on that of the plaintiff, involves the very substance of the plaintiff's device and constitutes an infringement upon the same. See also *Dunlop Pneumatic Tyre Company Ltd.* v. *Clifton Rubber Company Ltd.* (2).

There is no invention in merely applying well-known things, in a manner or to a purpose which is analogous to the manner or to the purpose in or to which it has been previously applied. *Nicolas,* on Patent Law, 23, and cases therein cited.

(1) (1896) 5 Ex. C.R. 195. (2) (1903) 20 R.P.C. 393 at 404.

Of the defendant's patent filed in the course of the trial (exhibit A) suffice it to say that it is no defence to the plaintiff's patent. Witness Grill, who had seen the plaintiff's circular and advertising literature, says that the plaintiff having complained of the device made under exhibit A, they abandoned the same and manufactured exhibit 2, the device attacked herein.

The facts before the court show that while the defendant has produced a device somewhat different in size and shape, yet it retains the features perfectly familiar to the plaintiff's device, without giving it any new function and without accompanying it with new result, bringing the bracket within the principle so often stated that:

> The mere carrying forward of the original thought, a change only in form, proportions or degree, doing the same thing in the same way, by substantially the same means, even with better results, is not such an invention as will sustain a patent.

The Railroad Supply Co. v. *Elyria Iron and Steel Co.* (1).

Again in the case of *Harwood* v. *G.N.R. Co.* (2), it was held that:

> A slight difference in the mode of application is not sufficient, nor will it be sufficient to take a well known mechanical contrivance and apply it to a subject to which it has not been hitherto applied.

The placing of known contrivances to a use that is new, but analogous to the uses to which they have been previously put to, without overcoming any fresh difficulty, is no invention. Re *Merten's Patent* (3); *Layland* v. *Boldy & Sons* (4).

And in *Blake* v. *San Francisco* (5), Wood J., delivering the opinion of the court cited the following words of Gray J., in *Pennsylvania Railway Co.* v. *Locomotive Engine Safety Truck Co.* (6) with approval, to wit:

> It is settled by many decisions of this court . . . that the application of an old process or machine to a similar and analogous subject, with no change in the manner of application, and no result substantially distinct in its nature, will not sustain a patent, even if the new form of result has not been before contemplated.

(1) (1917) Patent Office Gaz. U.S., Vol. 239, p. 656.
(2) (1864) 11 H.L. Cas. 654.
(3) (1914) 31 R.P.C. 373.
(4) (1913) 30 R.P.C. 547.
(5) (1885) 113 U.S. 679 at 682.
(6) (1884) 110 U.S. 490.

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There will be judgment declaring that the defendant has infringed the plaintiff's patent, the whole as prayed by the plaintiff's statement of claim and with costs.

Judgment accordingly.