

BETWEEN :

HOFFMAN-LA ROCHE LTD. APPELLANT;

AND

BELL-CRAIG PHARMACEUTICALS }
DIVISION OF L. D. CRAIG LTD. . . } RESPONDENT.

1964
Aug. 11

Patents—Practice—Patent Act, R.S.C. 1952, c. 203, s. 41(3)—Compulsory licence—Appeal under s. 41(3)—Application to suspend operation of licence pending appeal—Authority of Court to affect operation of Order of Commissioner of Patents pending appeal therefrom.

This is an application by the appellant to stay proceedings in relation to the grant of a compulsory licence under s. 41(3) of the *Patent Act* by suspending the operation of the licence pending the disposition of an appeal to this Court from the decision of the Commissioner of Patents to grant the licence.

Held: That it cannot be concluded that there is a probability that this Court will dispose of the appeal upon the ground that the Commissioner erred in not forming the opinion that the risk of danger to the public inherent in permitting the respondent to manufacture the

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patented substance was good reason for refusing the licence, and this is the only ground advanced by the appellant upon which the Court would consider granting a stay, if it has authority to do so.

2. That it is not established that this Court, in an appeal under s. 41(3), has any authority to affect the operation of the Commissioner's Order prior to disposition of the appeal.
3. That the application is dismissed.

APPLICATION for a stay of proceedings in relation to a decision by the Commissioner of Patents under subs. (3) of s. 41 of the *Patent Act*, an appeal having been taken from the decision to this Court.

The application was heard on August 11, 1964 by the Honourable Mr. Justice Jackett, President of the Court, at Ottawa, and was dismissed.

G. F. Henderson, Q.C. for appellant.

I. Goldsmith for respondent.

JACKETT P. now (August 14, 1964) delivered the following reasons for dismissing the application:

This is an application to stay proceedings in relation to a decision by the Commissioner of Patents to grant a compulsory licence under ss. (3) of s. 41 of the *Patent Act*, an appeal having been taken from the decision to this Court. The purpose of the application, as I understand it, is to have an order of this Court issue postponing the effective date of the compulsory licence pending disposition of the appeal.

The only ground, of those that have been urged upon me, upon which I would consider granting a stay, if I have authority to grant a stay, is that the Court might conclude, upon the disposition of the appeal, that the Commissioner of Patents erred in *not* forming the opinion that the risk of danger to the public inherent in permitting the respondent to manufacture the patented substance was good reason for refusing the licence.

In that connection, I refer to a statement by Thurlow J. in *Hoffman-La Roche Limited v. Delmar Chemicals Limited*¹, concerning the duty of the Commissioner in dealing with an application under ss. (3) of s. 41, as follows:

“But, as I read the section, neither the ability of the particular applicant to produce the food or medicine safely nor his ability to produce a safe food or medicine

¹ 27 Fox P.C. 178.

is a matter which the Commissioner is concerned to ensure.”

Having regard to that statement, with which I agree, I cannot conclude that there is a probability that this Court will dispose of this appeal upon the ground that the Commissioner erred in not forming the opinion that the risk of danger to the public inherent in permitting the respondent to manufacture the patented substance was good reason for refusing the licence.

Furthermore, I am not satisfied that this Court, in an appeal under ss. (3) of s. 41, has any authority to affect the operation of the Commissioner's order prior to disposition of the appeal.

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