

1925
Feb. 11.

BETWEEN:

JOHN J. WARREN ET AL. PLAINTIFFS;

AND

THE WATEROUS ENGINE WORKS }
COMPANY, LIMITED } DEFENDANT.

*Practice—Patents—Infringement—“First, true and sole inventor”—
Particulars.*

Plaintiffs by their action claim that the defendant is infringing *W*'s patent of invention granted to him by the Dominion Government, and *inter alia* allege that the plaintiff *W*. is the first, true and sole inventor. The defendant, before filing its defence, moved for particulars as to the time when and the place where the invention was made by the plaintiff *W*. alleging that it intends to contest the patent on the ground of prior knowledge thereof by others.

Held, that, inasmuch as the allegation of the plaintiffs as to *W*., being the first inventor was not necessary and was mere surplusage, and further that as the onus is upon the defendant, attacking the validity of the patent, to prove his allegation that others than the plaintiffs were the first inventors, he is not entitled to the particulars asked, and the present application was refused (1).

2. Moreover, that, as in the pleadings one is only required to generally disclose the outline of his contentions, and not to disclose his evidence, such particulars should not be ordered, being in the nature of evidence.

APPLICATION by the defendant for particulars.

Ottawa, February 11, 1925.

Application now heard before the Honourable Mr. Justice Audette in Chambers.

R. S. Smart for the application.

W. Herridge contra.

(1) NOTE.—See *Cave v. Tore*, 54 L.T.R. 515; *Gibbons v. Norman*, 2 T.L.R. 676; *James v. Radnor Cy. C.*, 6 T.L.R. 240; *Roberts v. Owens*, 6 T.L.R. 172.

Per Curiam: Plaintiffs by their action allege that they are the first, true and sole inventors of certain new and useful improvements in methods and apparatuses for grinding pulpwood and that they have been granted a patent for same by the Government of the Dominion of Canada, being No. 225,541, dated 31st day of October, A.D. 1922. The defendant, before filing its defence, applied for an order that the plaintiffs give particulars of their allegations of their Statement of Claim giving the time when and the place where the plaintiff *W.* made the invention in question. Inasmuch as it was unnecessary for the purposes of their action for the plaintiffs to allege that John J. Warren was the first, true and sole inventor of the improvements for which he obtained a patent and as this allegation was surplusage, he should not be forced to give particulars thereof. Moreover, when the defendant in an action for infringement attacks the validity of the patent in question, he becomes plaintiff as regards that issue and the onus of proving that the plaintiff was not the first inventor is upon him. Moreover such particulars are in the nature of evidence, and it is contrary to the practice to order a party to disclose his evidence before trial. In pleadings one is only required to generally disclose the outline of his contentions. Furthermore, to order the plaintiff to give particulars of the date at which he made the invention would be opening the door to perjury. Therefore defendant's application for the particulars in question should be dismissed.

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 WARREN
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 v.
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 COMPANY
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 Maclean J.

Judgment accordingly.