
BETWEEN:
 DOMINION MANUFACTURERS LTD..... PLAINTIFF;
 AND
 ELECTROLIER MANUFACTURING CO. } DEFENDANT.
 LTD. }

1933
 Mar. 13.
 Apr. 8.

Patent—Infringement—Simplicity of invention—Anticipation—Subject matter

Plaintiff alleged infringement of a patent relating to handles for use on caskets and other receptacles. The Court found that there was invention in plaintiff's idea of the mode of construction of the two members of the handle which permitted the locking of the handle to be effected by merely lifting the grip after it was placed in the base; that there was no anticipation in the prior art; that defendant's handle differed from that of plaintiff only in the practice of locking the mem-

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bers by a machine operation, a means which produced the same handle and the same result.

Held, that infringement cannot be evaded because one chooses to adopt a slower and more expensive method of doing what a patent clearly states may be done in another and better way.

2. That invention should not be denied upon the ground of the mere simplicity of the thing invented and patented.

ACTION by plaintiff asking for a declaration that plaintiff's Letters Patent are valid and for an injunction restraining defendant from infringing same.

The action was tried before the Honourable Mr. Justice Maclean, President of the Court, at Ottawa.

W. L. Scott, K.C., for plaintiff.

R. S. Smart, K.C., and *M. B. Gordon* for defendant.

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

THE PRESIDENT, now (April 8, 1933), delivered the following judgment:

This is an action for alleged infringement of patent no. 194,209, granted to one Pahlow on November 25, 1919, upon an application dated April 15, 1919, and by him assigned to the plaintiff; the corresponding patent in the United States issued to the same patentee on April 29, 1919, upon an application filed in February, 1919. The invention is said to relate to new and useful improvements in a handle that is adaptable for use on caskets and other receptacles.

The handle described in the patent consists essentially of two members, the plate or base which is attached to the side of the casket, by means of screws, and what is referred to in the patent as the "grip," that is the portion of the handle grasped by the hand in lifting the casket or other receptacle. The two members when assembled together are referred to in the patent as the handle, and from this designation I shall not depart. In the plate is a hole or opening, in the form of a half circle, and associated with this opening is a means for pivoting the grip, and this is a bar extending across the lower part of the opening. The boundaries of the opening, at the top and bottom, provide surfaces for the grip; the upper end of the grip is bent to form an elbow and in the sides of that elbow are slots; the

grip is trough shaped so that the slot is only in the side walls of that trough shaped member, and the slot forms tongues at the lower side of the grip, and these tongues are bendable. In assembling the two members together, the plate and the grip, the pivot enters the slot and when the grip is raised the tongues bend to close the outer opening of the slot, and the grip is then permanently locked with the plate member and is fixed in position with respect to the plate. That is a brief description of the alleged invention, and much as given, correctly I think, by one of the plaintiff's witnesses, and I could not possibly make it any clearer if I attempted to do so. In 1925, I might observe, the patentee in the manufacture of the plate member abandoned the pivot bar construction and instead adopted the construction of two holes or perforations in the lower wall of the plate for pivoting the grip.

The infringing handle is practically the same as that described in the patent in suit, except that the pivoting means in the defendant's handle is not a continuous bar extending fully across the plate opening but consists of two holes in and about which the tongues in the sides of the grip rotate when they are closed, that is to say, the pivoting means for the grip, is or are formed by punching a hole, or holes, in the lower wall of the plate, rather than cutting a slot continuously across the opening as shown in the patent drawings. The defendant's construction of the pivoting means is that adopted by the patentee in 1925, and that construction, the plaintiff claims, is the equivalent of the construction described by the patentee, and in that I concur. If there is invention in Pahlow, then the defendant's structure, I think, infringes the patent notwithstanding the pivoting means described in the patent is slightly different from that found in the infringing handle, and in the practice of the patentee, or his assignee, since 1925.

The principal defences raised on behalf of the defendant are lack of subject matter, anticipation, and that there is no infringement because in the infringing handle the plate and grip are locked by a die and press operation, and not automatically by lifting the grip with the hand. I shall first discuss the question of invention.

The plaintiff's handle is stamped out from sheet steel in two pieces, the plate and the grip, and are so con-

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structed or formed that these two members are readily and effectually locked together in one operation, as I have already mentioned. These two members may be permanently locked together at the rate of 1,000 to 1,200 per hour by workmen, and without any tool or machine operation. The utility of Pahlow is not questioned, and it has gone widely into use in Canada, and in the United States. Prior to Pahlow's handle for caskets, and by handle I mean the combined plate and grip members when locked together, the grip member was inserted in the opening provided in the plate member and there fastened with a pin. These handles were at first made of cast metal, but later were stamped out from sheet steel. Pahlow seems quite a simple affair when once revealed to the eye, but invention, if such there be, should not be denied upon the ground of the mere simplicity of the thing invented, and patented. That is well settled patent law. Pahlow's method of constructing the plate and grip members, so that with the mere upward lift of the grip they become permanently locked, appears to me as being quite novel and ingenious indeed. It reduces the number of elements or members in the handle and consequently requires less material; fewer operations and less time is required in assembling the two members together as compared with construction which required the use of a pin in the locking means. However simple this may appear now, when it is once done, I think there is invention in Pahlow, providing there has been no anticipation. The case is rendered somewhat difficult because the invention seems such a simple one. There was, I think, invention in the idea of the mode of construction or formation of the two members of the handle, which involve the idea of the locking means which Pahlow points out in his patent. The patent may be thought a narrow one, but yet I think it contains subject matter. I think it called for that amount of original work which is so often the badge of invention as understood in the law of patents.

Two patents in the prior art were referred to, Fletcher, United States patent no. 438,349, and Raymond, United States patent no. 1,027,067. A patent to one Christian was also mentioned but it is conceded that this patent was not prior to Pahlow. In Fletcher the base and grip are united by a pin; it is an old construction and not at all an antici-

pation of Pahlow. In Raymond, the base and grip are of the general construction of Pahlow; the prongs or fingers of the grip are inserted through the opening in the base past the inner side of the face of the base, and these prongs or fingers are then tapped outwardly from the back of the plate through the holes below the opening, and out to the front of the plate. Now Raymond requires more operations than Pahlow in that the prongs or fingers have to be tapped back manually through the holes below the opening wherein the grip is inserted, and out to the face of the base. Raymond does not comprehend the idea which, I think, conspicuously marks Pahlow, and that is, that the construction permits the locking to be effected by merely lifting the grip after it is placed in the base. I do not think Raymond is an anticipation of the idea or principle which, in my opinion, constitutes invention in Pahlow. It was said by a witness for the defence that the fingers in Raymond could be bent by lifting the handle, and that there was no mechanical difficulty in having the fingers go through the base from the front instead of the back. It is easy to suggest a reconstruction of Raymond to make it correspond to Pahlow, when once it is known how the members of Pahlow are constructed and formed, and how they are locked. Raymond did not envisage or suggest Pahlow at all, and he clearly had in mind a different construction and formation, and a different principle altogether in locking the grip to the base member. This is a case where the invention resides largely in the idea, and I do not think it can be successfully claimed that Raymond had any vision of the dominant idea found in Pahlow. I do not think there is anticipation in the patent to Raymond.

Now, as to the contention that there is no infringement in the defendant's handle because the locking of the base and grip is not done by the hand as described by Pahlow. The infringing device is locked by a die and press, a mechanical operation. It was stated that this manner of locking the plate and grip ensures uniformity of production, but that fact of itself is never relevant to the issue of patentability or infringement. It was also stated that the defendant's method of assembling the members of the handle was expeditious, and was no more expensive—perhaps less expensive—than Pahlow's method of assembling the same

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members, the grip and the base, but I doubt the accuracy of either statement. I do not believe, as was suggested by one of the defendant's witnesses, and denied by Pahlow, that as many handles could be assembled by the defendant's method, per hour, or at the same cost, as could be done by Pahlow's method. Is infringement avoided by the defendant because of the practice of locking the members by a machine operation? Claim 2 of the patent is as follows:—

A handle comprising a base member having an opening and provided with a pivot bar extended across the opening; and a grip insertible into the opening and having a slot receiving the pivot bar, the slot defining a bendable finger in the grip, the finger having a lug adapted to engage the base member at the lower edge of the opening, the finger and the lug co-operating with the base member, when the grip is raised, to secure a bending of the finger, a partial closing of the slot, and a permanent pivotal mounting of the grip on the bar.

The point raised by the defendant is rather an unusual one, and I was referred to no authority bearing on the point. It would appear to me unreasonable if the defendant's contention should prevail. I do not think that the patentee in his claims restricts himself to one method of locking the base member and the grip member, though he does mention only one method of doing it. It is a handle composed of two members of a described construction or formation that is claimed, and one rapid and cheap method of locking the two members together is mentioned. If one chooses to adopt a slower and more expensive method of doing what the patent clearly states may be done in another and easier way, surely infringement cannot be evaded in that manner, nor should the sole right of manufacture be lost to a patentee by such a circumstance. I think this is a case where the law of equivalents applies because Pahlow disclosed an entirely new way of locking the two members of the handle. The two members of the defendant's handle, the base and grip, are clearly the same as the corresponding members in the plaintiff's handle, and when the two members are united the defendant's handle is the same as the plaintiff's patented handle, but the locking of the members was done in a different way, that is to say, the defendant bends the prongs or fingers by a mechanical operation, while Pahlow does the same thing by a slight movement of the hand. If the defendant adopts a means of locking the members which is not so advantageous or convenient as the

means or method pointed out in the patent, is the patentee to lose the benefit of his invention by reason of this? I do not think that in reason or sense this should relieve the defendant of the charge of infringing the patent. The defendant may have adopted another way of bending the fingers of the grip, but that does not grant it the privilege of making the plaintiff's handle, that is to say, a construction or formation of the two members in such a way, that they may be readily locked together without the use of a pin, a tool operation, or a machine operation. The fact that the defendant locks the two members by a machine instead of by hand, a means which produces the same handle and the same result, is not, in my opinion, sufficient to avoid infringement. I think there is infringement and that the plaintiff must succeed; and it shall have its costs of the action.

Judgment accordingly.

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