

Federal Court



Cour fédérale

Date: 20190313

Docket: T-2179-18

Citation: 2019 FC 309

Toronto, Ontario, March 13, 2019

PRESENT: The Honourable Madam Justice McDonald

BETWEEN:

**GENERAL TRANSPORT EQUIPMENT PTY.
LTD.**

Applicant

and

**THE ATTORNEY GENERAL OF CANADA
AND TYTEC LOGISTICS PTY. LTD.**

Respondents

JUDGMENT AND REASONS

[1] General Transport Equipment Pty. Ltd. brings this application pursuant to Section 52 of the *Patent Act*, RSC 1985, c P-4 to correct the inventors of record of Patent No. 2,639,371 (371 Patent) to include Robert Diss, their employee, as a co-inventor.

[2] The issue of Mr. Diss as a co-inventor was addressed by the Australian Patent Office who determined that Brett Fennell and Robert Diss are co-inventors of the equivalent Australian Patent.

[3] The Respondent, Tytec Logistics Pty. Ltd., is the owner of Patent No. 2,639,371 (371 Patent) and the employer of the co-inventor Brett Fennell. Tytec confirmed in writing that they support this application and they waived their rights to be served with the application materials.

[4] The Attorney General on behalf of the Commissioner of Patents was served with this application and confirmed that it would not be filing material or participating in the application.

[5] The Australian Patent Office and the United States Patent Office have considered the inventorship of corresponding Australian and United States Patents, and added Robert Diss as a co-inventor to the corresponding patents.

[6] Pursuant to section 52 of the *Patent Act* the court has jurisdiction to order the correction of the records of the Patent Office regarding the listing of a co-inventor (*Micromass UK Ltd v Canada (Commissioner of Patents)*, 2006 FC 117, at paras 12-13).

[7] With respect to applicable test, sub-section 31(4) of the *Act*, provides that that the person should be joined as a co-inventor provided “that the omission of the further applicant or applicants had been by inadvertence or mistake and was not for the purpose of delay”.

[8] I am satisfied, on the basis of the application record and the decision of the Australian Patent Office that the Australian co-inventorship principles are substantially the same as the applicable Canadian principles (*Apotex Inc. Wellcome Foudnation Ltd.*, 2002 SCC 77 at para 99). I am therefore satisfied that Robert Diss should be added as a co-inventor. Finally, I am satisfied that his name was omitted from the original application by inadvertence or mistake, and was not for the purpose of delay.

JUDGMENT IN T-2179-18

THIS COURT'S JUDGEMENT is that:

1. The Commissioner of Patents, pursuant to section 52 of the Patent Act, shall vary all entries in the records of the Patent Office with respect to the inventorship of Canadian Patent No. 2,639,371 by adding Robert Diss as a co-inventor.
2. There shall be no order as to costs.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2179-18

STYLE OF CAUSE: GENERAL TRANSPORT EQUIPMENT PTY. LTD. v
THE ATTORNEY GENERAL OF CANADA AND
TYTEC LOGISTICS PTY. LTD.

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 13, 2019

JUDGMENT AND REASONS: MCDONALD J.

DATED: MARCH 13, 2019

APPEARANCES:

Alan Macek

FOR THE APPLICANT

FOR THE RESPONDENT

SOLICITORS OF RECORD:

DLA Piper Canada (LLP)
Solicitors
Toronto, Ontario

FOR THE APPLICANT

FOR THE RESPONDENT