



T-1805-96

BETWEEN:

TECHNOLOGIE MICRO-CONTRÔLE INC.

Plaintiff

AND

TECHNOLOGIE LABTRONIX INC.

- and -

GÉRALD DUHAMEL

Defendants

REASONS FOR ORDER

RICHARD MORNEAU,
PROTHONOTARY:

This is a motion to strike out and for particulars by the plaintiff under Rules 415, 419 and 422 of the *Federal Court Rules* (the Rules).

Context

To get to the heart of the matter, it appears that the defendants were afforded an opportunity in the past to review and amend their defence, which was filed initially on October 18, 1996.

On January 24, 1997 a “re-amended defence and amended counterclaim” (hereinafter “the defence”) was filed in the Court record.

On February 17, 1997, the plaintiff submitted in opposition to this defence a motion that eight (8) of its paragraphs be struck out and that the defendants be required to provide particulars resulting from some 82 requests for particulars.

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Analysis

The defence now on file represents an attempt by the defendants to comply with the requirements of the drafting rules. A fair number of particulars in the initial defence have been abandoned. As a result, the defence now contains 49 allegations, compared with the 208 paragraphs of the original defence.

However, it appears that the defendants' efforts so far have been limited to amending the form or presentation of the defence without specifically replying to the plaintiff's statement of claim.

This was possible, since counsel for the defendants conceded in the hearing that the purpose of their defence was to denounce the conclusions sought by the plaintiff and to obtain in return a recognition of the same claims in relation to the same intellectual properties identified by the plaintiff in its statement of claim.

In light of my analysis, it is doubtful that the plaintiff really needs all of the particulars sought in order to reply intelligently in the context of any future pleadings (see *Embee Electronic Agencies Ltd. v. Agence Sherwood Agencies Inc. et al.* (1979), 43 C.P.R. (2d) 285 (F.C.T.D.), at p. 287). To persuade me otherwise, it would, I think, have been necessary in the circumstances for the plaintiff to support its claims with an affidavit demonstrating this need; this it has not done (see *Astra Aktiebolag v. Inflazyme Pharmaceuticals Inc.* (1995), 61 C.P.R. (3d) 178 (F.C.T.D.), at pages 180, 181 and 188).

Furthermore, if we adopted the plaintiff's approach as is, we would in my opinion find ourselves with a host of particulars that at the end of the day would be of no assistance to the parties or the Court in understanding and grasping the exact claims of the parties, claims which must *prima facie* be found in the text of the proceedings and not elsewhere.

I therefore have no intention at this time of granting the plaintiff the particulars it is seeking, in accordance with the approach it has adopted in its motion.

Reading the defence as presently worded, however, one must acknowledge that the plaintiff feels some legitimate frustration.

Indeed, this latter substantive proceeding appears to overlook the fact that it is a reply to, and, insofar as it is a counterclaim, a claim in a proceeding already on the record, namely, the statement of claim.

The defence now denies virtually every possible allegation in the statement of claim (paragraphs 1 to 15) and then proceeds as a statement of claim independent of the statement of claim to which it is nevertheless supposedly responding.

For example, paragraph 34 of the defence reads as follows:

[*Translation*]

34. Neither the plaintiff, Technologie Micro-Contrôle, nor its executive officer, Mr. Daniel Lamothe, holds any copyright in the defendant's CTRL and MPLT circuit boards within the meaning of the *Copyright Act*;

[emphasis added]

It is inadmissible that in this paragraph the defendants put the emphasis on their circuit boards, claiming that the plaintiff has no right in them. Throughout the defence — and not simply in paragraph 34 — the defendants, it seems to me, have to get the Court to find that the theory of their case is that the plaintiff holds no copyright in the property identified by the plaintiff, i.e. the design of the computer circuit boards identified by the plaintiff and the design of the programming installed in these boards.

Furthermore, if, as stated earlier, the defence has to do with the property identified by the plaintiff — and this is what I was led to believe in the oral argument — the defence, in both its reply and its counterclaim, must try to use as much as possible the same technical vocabulary used by the plaintiff.

Moreover, if the same properties are at stake, it is hard to see why the defence denies all the paragraphs in the statement of claim.

Similarly, the defendants must establish clearly the chain of title allegedly underlying their copyright in the property in question.

In my opinion, the appropriate order in the circumstances (point V of the plaintiff's notice of motion) will be as follows.

The defendants shall have twenty (20) days from the date of the order in which to file and serve a "defence and counterclaim" which shall comply with all the applicable rules and these reasons for order. This exercise shall not enable the defendants to do anything but that. The "defence and counterclaim" — when filed and served — will be considered and presumed to replace all defences and counterclaims of any nature filed up to now by the defendants. The latter proceedings shall not, however, be withdrawn from the Court file.

The plaintiff may again plead any preliminary argument in opposition to this proceeding or any other motion if the defendants fail to perform within the given twenty (20) days.


The other conclusions sought by the plaintiff in this motion are dismissed. I am not persuaded that it is necessary to intervene at this point through striking out. Once the exercise described above has been carried out it may — albeit not necessarily — be appropriate to review the whole matter.

In view of the preceding reasons, I consider that the plaintiff is nevertheless entitled to costs on this motion (but not to those that might result from the motions of December 11, 1996 and January 8, 1997).

Richard Morneau
Prothonotary

Montréal, Quebec
February 21, 1997

Certified true translation



Christiane Delon, L.L.L.

Federal Court of Canada

Court file no. T-1805-96

BETWEEN:

TECHNOLOGIE MICRO-CONTRÔLE INC.

Plaintiff

AND

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- and -

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Defendants

REASONS FOR ORDER

FEDERAL COURT OF CANADA

NAMES OF COUNSEL AND SOLICITORS OF RECORD

FILE NO. T-1805-96

STYLE: TECHNOLOGIE MICRO-CONTRÔLE INC.

Plaintiff

AND

TECHNOLOGIE LABTRONIX INC.
-and-
GÉRALD DUHAMEL

Defendants

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: February 17, 1997

REASONS FOR ORDER BY: Richard Morneau, Prothonotary

DATE OF REASONS FOR ORDER: February 21, 1997

APPEARANCES:

Bruno Barrette for the plaintiff

Jean-François Brouillard for the defendant

Richard Généreux for the defendant

SOLICITORS OF RECORD:

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JUL 22 1997

THE FEDERAL COURT
OF CANADA

LA COUR FÉDÉRALE
DU CANADA

Court No.: T-1805-96

No. de la cause:

Let the attached certified translation of the following document in this cause be utilized to comply with Section 20 of the **Official Languages Act**.

Je requiers que la traduction ci-annexée du document suivant telle que certifiée par le traducteur soit utilisée pour satisfaire aux exigences de l'article 20 de la **Loi sur les langues officielles**.

Reasons for Order

June 16, 1997

Richard Morneau

DATE

Prothonotary

Protonotaire

Form T-4M

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