

Federal Court of Canada  
Trial Division



Section de première instance de  
la Cour fédérale du Canada

Court No. T-713-97

BETWEEN:

JEAN PATOU INC.

Plaintiff

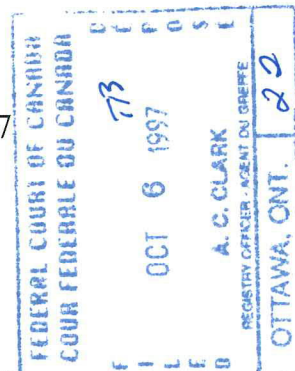
- and -

LUXO LABORATORIES LTD.

Defendant

Let the attached certified transcript of my Reasons for Order delivered orally from the Bench at Toronto, Ontario, on July 14, 1997 be filed to comply with S. 51 of the *Federal Court Act*.

A.C.J.



ORIGINAL

FEDERAL COURT OF CANADA  
(TRIAL DIVISION)

FEDERAL COURT OF CANADA  
AUG 5 1997  
COUR FÉDÉRALE DU CANADA  
TORONTO, ONT.

B E T W E E N :

JEAN PATOU INC.,

Plaintiff,

- and -

LUXO LABORATORIES LTD.,

Defendant.

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P R O C E E D I N G S  
BEFORE THE ASSOCIATE CHIEF JUSTICE,  
THE HONOURABLE MR. JAMES JEROME  
Court Room No. 7  
330 University Avenue, 8th Floor  
on Monday, the 14th day of July, 1997  
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REASONS FOR JUDGMENT

R E G I S T R A R :

Rola Graff

C O U N S E L :

BRUNO BARRETTE, Esq.,

for the Plaintiff

GILLIAN SMITH, (Ms.),

for the Defendant

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I N D E X O F P R O C E E D I N G S

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1 ---Court proceedings in progress from 11:45 a.m.  
2 ---Judgment with reasons rendered at 2:15 p.m.

3

4 THE COURT: Thank you, Ms. Smith. Thank  
5 you for your reply and for your very able submission.  
6 I cannot accept the application to cross-examine and,  
7 ~~so~~ so, your application will be dismissed.

8 REASONS FOR JUDGMENT:

9 My reasons very briefly are these:

10 ~~It is that~~ I have a choice to make here,  
11 and I am directed on the one hand and influenced by  
12 your submission that you seek to clarify several  
13 aspects of the affidavits filed into court, but there  
14 are two things against you there:

15 The first of course is that the  
16 affidavits if they contain weaknesses really put the  
17 applicant at risk because the shortcomings of those  
18 affidavits will, I assume, fall back on the applicant  
19 who has had to have filed these affidavits in support  
20 of this application, the main application.

21 If they contain elements that offend the  
22 rules against affidavits in our rules, or opinion  
23 evidence, or things of that sort, they can be subject  
24 naturally to a motion to strike, <sup>07</sup> ~~while~~ particulars  
25 which may come later.

26 But that is not what I have before me

1       today. What I have before me today is the suggestion  
2       on your part that there are a number of elements or a  
3       number of details of the affidavits which are missing  
4       that could create an exceptional situation here which  
5       require cross-examination on your part, and the  
6       jurisprudence strikes me clearly that this must be done  
7       only in exceptional cases because otherwise the rule  
8       that says it can only be done by leave of the court has  
9       no meaning.

10                   The jurisprudence also says that to  
11       support that position or to get me to side with you it  
12       is not enough to simply point out that there are some  
13       areas where there are deficiencies. You must convince  
14       me indeed that an exception should be made to the rule,  
15       and that I should grant you leave as against which  
16       there is of course the basic principle that these are  
17       proceedings that should be done summarily.

18                   I know that with many of these major  
19       players, when they are protecting their trademarks,  
20       summarily can suddenly turn into two to three year  
21       proceedings, but that does not mean in any way that I  
22       should not endorse or support that kind of protracted  
23       litigation by permitting you to cross-examine, which I  
24       assume then will be met with a countervailing  
25       application from the other side on the same basis that

1 that is not necessarily so. But your material is not  
2 filed yet?

3 MS. SMITH: It is.

4 THE COURT: It is, okay. In any event we  
5 do not have it yet.

6 But nevertheless I am guided in  
7 particular by the summation done by Justice McGillis in  
8 Novopharm v. Bayer which is at tab 1 of the  
9 respondent's materials. And in the principles that she  
10 has set out there I do not find that this is the  
11 exceptional case which warrants cross-examination.

12 JUDGMENT:

13 So for these reasons your application is  
14 dismissed.

15 I will make an endorsement in a minute  
16 that your application is dismissed for reasons given  
17 orally, and that brief written reasons will be filed  
18 when I have had a chance to edit the transcript of my  
19 own reasons. Thank you, et bien merci, Monsieur  
20 Barrette.

21 THE REGISTRAR: This court is closed.

22 L'audience est complete.

23

24 ---Whereupon, court proceedings were adjourned at  
25 2:15 p.m.

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T-713-97  
Reasons for Judgment  
July 14, 1997

The foregoing is certified to be a true and accurate Computer-Assisted Transcription (C.A.T.) of my shorthand notes, to the best of my skill and ability.

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Patrizia Generali, Court Reporter.  
Telephone: (416) 482-3277  
Toronto, August 5, 1997.

Quality Control Dept,

