

Federal Court



Cour fédérale

Date: 20230601

Docket: T-693-23

Citation: 2023 FC 768

Vancouver, British Columbia, June 1, 2023

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

REGENERON PHARMACEUTICALS, INC.

Applicant

and

CANADA (ATTORNEY GENERAL)

Respondent

JUDGMENT AND REASONS

[1] Regeneron Pharmaceuticals, Inc. [Regeneron] owns Canadian Patent No. 3,007,276 [the 276 patent]. Lorah Perlee and Sara Hamon are currently listed as the inventors of the 276 Patent. However, Regeneron discovered that Dr. Charles Paulding should also have been named as inventor. Regeneron now applies for an order directing the Commissioner of Patents to vary the records concerning the 276 Patent, so that Dr. Paulding can be added as inventor. I grant Regeneron's application.

[2] An application of this kind is governed by section 52 of the *Patent Act*, RSC 1985, c P-4. Section 52 states that this Court has jurisdiction to order the variation of any entry in the records of the Patent Office. Section 52 does not set out the circumstances in which such an order may be made. This Court has said, however, that the criteria found in section 31(4), which governs the addition of applicants to a patent application, are relevant to an application under section 52: *Micromass UK Ltd v Canada (Commissioner of Patents)*, 2006 FC 117; *Plasti-Fab Ltd v Canada (Attorney General)*, 2010 FC 172; *Gilead Sciences, Inc v Canada (Commissioner of Patents)*, 2019 FC 70. Section 31(4) allows further applicants to be joined where “the omission of the further applicant or applicants had been by inadvertence or mistake and was not for the purpose of delay.”

[3] I am satisfied, on the basis of the application record, that Dr. Paulding’s name has been omitted from the original application by inadvertence or mistake. There is no evidence of any improper purpose. While Regeneron did not provide affidavits from the other inventors, this is not a bar to an application pursuant to section 52: *CAE Inc v Canada (Commissioner of Patents)*, 2021 FC 307 at paragraph 22. Moreover, I note that the Canadian and United States Patent Offices have both agreed to add Dr. Paulding’s name as an inventor on patent applications that are related to the 276 Patent.

[4] An application pursuant to section 52 should include a statement that the patent at issue is not the subject of pending litigation or evidence allowing the Court to find that granting the application would not affect the rights of third parties. The 276 Patent is currently the subject of litigation in Court files T-1241-22 and T-581-23. Counsel for Regeneron gave notice of the

present application to counsel for the other parties in these other proceedings. No one has sought to intervene in this application. I am therefore satisfied that third party rights are not affected.

[5] For those reasons, Regeneron's application is granted.

JUDGMENT in T-693-23

THIS COURT'S JUDGMENT is that

1. The Commissioner of Patents is directed to vary all entries in the records of the Patent Office to amend the named inventors of Canadian Patent No. 3,007,276 to add Dr. Charles Paulding as co-inventor.
2. No costs are awarded.

"Sébastien Grammond"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-693-23

STYLE OF CAUSE: REGENERON PHARMACEUTICALS, INC. v
CANADA (ATTORNEY GENERAL)

**APPLICATION CONSIDERED IN WRITING AT VANCOUVER, BRITISH
COLUMBIA**

JUDGMENT AND REASONS: GRAMMOND J.

DATED: JUNE 1, 2023

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