Federal Court of Appeal | Cour d'appel fédérale

Date: 20260122

Docket: A-274-24

Citation: 2026 FCA 13

CORAM: **LOCKE J.A.**
ROUSSEL J.A.
GOYETTE J.A.

BETWEEN:

AP&C ADVANCED POWDERS & COATINGS INC.

Appellant

and

TEKNA PLASMA SYSTEMS INC.

Respondent

Heard at Montréal, Quebec, on January 22, 2026.
Judgment delivered from the Bench at Montréal, Quebec, on January 22, 2026.

REASONS FOR JUDGMENT OF THE COURT BY: LOCKE J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Montréal, Quebec, on January 22, 2026).

LOCKE J.A.

[1] This appeal concerns a decision by the Federal Court (2024 FC 871, *per* Justice Nicholas McHaffie) addressing allegations of infringement and invalidity of a pair of related patents that describe metal powder atomization manufacturing processes used to produce high quality powders useful for applications such as 3D printing, powder injection molding, hot isostatic pressing and coatings: Canadian Patents Nos. 3,003,502 (the 502 Patent) and 3,051,236 (the 236

Patent). Of particular importance to this appeal, the Federal Court found that the term "depletion layer" in the claims in issue was not a term of art and that the skilled reader of the patents in suit would not be able to construe this term. On this basis, the Federal Court found the claims in issue to be invalid for ambiguity.

[2] The appellant, AP&C Advanced Powders & Coatings Inc. (AP&C), argues that the Federal Court erred in effectively requiring that a valid (unambiguous) patent claim include means of proving infringement. Having carefully reviewed the decision under appeal and having considered AP&C's written and oral submissions, it is our view that the Federal Court made no such error.

[3] The Federal Court was correct to observe at paragraph 325 of its reasons that the claims of a patent must define distinctly and in explicit terms the subject matter of the invention for which an exclusive privilege or property is claimed (subsection 27(4) of the *Patent Act*, R.S.C. 1985, c. P-4), and that failure to do so may render the patent invalid for ambiguity. The Federal Court was also correct to state at paragraph 328 of its reasons that the scope of a patent's prohibition should be made clear so that members of the public may know where they can go with impunity, and that when the claims, read purposively in the context of the patent as a whole, and with a mind willing to understand, do not permit the skilled reader to understand what falls within the claim and what does not, the patent does not serve its notice function and becomes a "patent of uncertain scope" that is a "public nuisance" (*Free World Trust v. Électro Santé Inc.*, 2000 SCC 66, [2000] 2 S.C.R. 1024 at paras. 41 and 42). The Federal Court was also fully aware

of the general disinclination of the courts to find a patent claim invalid for ambiguity. The Federal Court did not misstate the law on ambiguity.

[4] After a thorough review of the patents in suit, the evidence, the applicable law and the parties' submissions, the Federal Court concluded that the claims in issue were ambiguous because the skilled reader would not be able, as regards the 502 Patent, to distinguish between the depletion layer and the native oxide layer, and hence would not be able to determine whether the former was deeper and thicker than the latter, and as regards the 236 Patent, to determine the existence of a depletion layer or its parameters.

[5] In these conclusions, we see no error of law, no palpable and overriding error of fact, nor any error of mixed fact and law from which an error of law is extricable. The Federal Court explained its reasoning throughout and took proper account of the evidence before it. The Federal Court was entitled to reach the conclusions it did. The Federal Court also properly recognized the differences in the wording of the various claims of the patents in suit.

[6] We do not accept AP&C's argument that the Federal Court could not properly conclude that the claims in issue were ambiguous because it was able to construe them. The Federal Court stated clearly that the claims in issue provided insufficient definition to understand their scope.

[7] In view of our conclusion on the issue of ambiguity, it is not necessary to consider AP&C's arguments on the issues of insufficiency and infringement.

[8] We will dismiss the present appeal with costs fixed in the all-inclusive amount of $30,000.

"George R. Locke"
J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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