



[2022] 1 F.C.R. D-5

PATENTS

INFRINGEMENT

Action for infringement of claim 7 of Canadian Patent No. 2545150 ('150 patent) entitled "Method and Apparatus for Adaptive Echo and Noise Control" — Defendant alleging Claim 7 invalid, obvious, not inventive in counterclaim — Plaintiff owner of '150 patent — Defendant carrying on business, *inter alia*, as importer, manufacturer of smart speakers, associated products — Whether defendant directly infringing or inducing infringement of claim 7 — Whether claim 7 invalid because its subject matter obvious to person of skill in art (POSITA) contrary to *Patent Act*, R.S.C., 1985 c. P-4, s. 28.3 — Defendant's devices compatible with both Amazon Alexa, Google Assistant voice assistants — Gravamen of dispute competing interpretations of following element of claim 7: "wherein the adaptive echo and noise control system is configured to adaptively determine an order of echo cancellation and noise suppression based on an amount of noise in the received signal to generate a desired signal." — Disagreement between experts as to meaning of "echo cancellation", "noise suppression" largely motivated by question of whether "echo cancellation" subset of "noise suppression" or whether those terms mutually exclusive — Clear that "noise suppression", "echo cancellation" meant to be two distinct, mutually exclusive processes — Defendant's products at issue not directly infringing '150 patent — Question whether a user, when using defendant's devices with Amazon Alexa voice assistant enabled, infringing claim 7 — Defendant's devices not "configured to adaptively determine an order of echo cancellation and noise suppression based on an amount of noise in the received signal to generate a desired signal", therefore not infringing claim 7 — Inventive concept of claim 7 ability to adaptively determine order of echo cancellation, noise suppression components in echo, noise control system based on amount of noise in received signal — Disagreement on meanings of "adaptively", "order" — Defendant relying on United States Patent No. 5668871 ('871 patent) — Plaintiff going too far in saying that '871 patent not eligible prior art because it would not have been located in reasonably diligent search — Obscure prior art reference is eligible prior art at step three of four-step analysis in *Apotex Inc v. Sanofi-Synthelabo Canada Inc*, 2008 SCC 61, [2008] 3 S.C.R. 265 — However, difficulty of locating document matter that may be considered at final step — Question thus becoming whether, given obscure nature of '871 Patent, uninventive POSITA might have thought to combine '871 Patent with other prior art to make claimed invention — Given difficulty in locating '871 Patent, POSITA not led directly, without difficulty to combine references in prior art — '150 patent not obvious based on any combination involving '871 Patent — Claim 7 not invalid for obviousness — Claim, counterclaim dismissed.

GOOGLE LLC V. SONOS, INC. (T-952-20, 2022 FC 1116, Zinn J., public reasons for judgment dated August 15, 2022, 38 pp.)