

<p>1931 Dec. 8.</p> <hr/> <p>1932 Feb. 25.</p>	<p>GILLETTE SAFETY RAZOR COM- PANY OF CANADA, LIMITED.....</p>	<p>} PLAINTIFF;</p>
	<p>vs.</p>	
	<p>SAMUEL MAILMAN ET AL.....</p>	<p>DEFENDANTS.</p>

*Patents—Validity—Subject-matter—Infringement—Sale of one element of combination—Anticipation—Publication.*

The plaintiff is the owner of a patent relating to improvements in blade holders, and means for retaining blades in the holder, in safety razors. The article made up of the blade-holder and blade, and the associated integers, is what is protected by the patent. The blade and holder in combination is described and claimed, as also the blade and holder separately. The defence is that the patent is null for want of subject-matter and anticipation and that the defendant does not infringe.

*Held* that the idea of employing a blade-holder of the type described, with projections in the upper plate of the holder to co-operate with apertures in the blade, for holding it in the required position, had not been previously suggested by anyone, and required some amount of ingenuity. That it was not a common idea, or a natural development of an old idea, or one which would readily occur to workers in that art, and was not anticipated.

2. That, as the invention produces no new result, it is protected only in respect of the particular means set forth in the Specification.
3. That the sale of the blade alone, in all respects the same as plaintiff's, without the holder, but manufactured for use in plaintiff's holder constitutes an infringement of plaintiff's patent.

[*Townsend v. Haworth* (1879) 48 L.J. Eq. 769, and *Dunlop Pneumatic Tyre Co. v. Moseley & Sons et al* (1904) 21 R.P.C. 274, discussed and distinguished.]

ACTION by plaintiff to have its patent for invention, for certain improvements on safety razors, declared valid and infringed by the defendants, for an injunction and for damages, etc.

The action was tried before the Honourable Mr. Justice Maclean, President of the Court, at Ottawa.

*George F. Henderson, K.C.*, and *E. G. Gowling* for plaintiff.

*O. M. Biggar, K.C.*, for defendants.

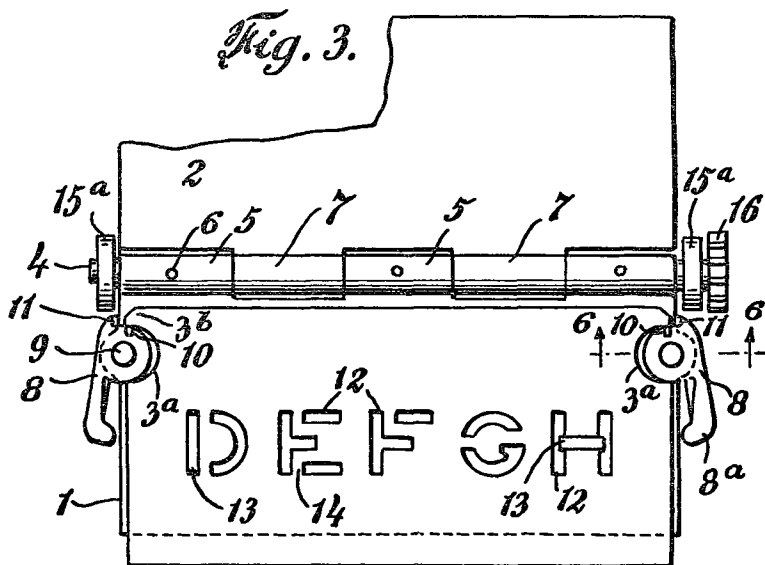
The facts, and the material parts of the specification and claims of the patent in suit are given the reasons for judgment.

THE PRESIDENT, now (February 25, 1932), delivered the following judgment:

This is an action for infringement of a patent granted in March, 1929, to Auto Strop Patents Corporation, the assignee of Henry J. Caisman, the patentee, and by the former assigned to the plaintiff corporation. Another action for infringement of the same patent was brought by the plaintiff against Pal Blade Corporation Limited, a concern said to be closely allied to the defendants in this action; both actions were heard together and upon virtually the same evidence.

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Fig. 3 of the drawings, reproduced below, will assist in understanding the description of the alleged invention as set forth by the patentee in his specification, and from which I shall quote.



The patentee describes his invention generally in the following language:—

My invention relates to improvements in blade holders and is particularly applicable for detachably retaining blades in safety razors and blade stropping mechanism.

An object of my invention is to provide a blade holder provided with one or more projections adapted to co-operate with a corresponding opening or openings in the interior of the blade between its marginal edges to retain the blade in the holder.

A particular feature of my invention is that a word or symbol, such as a Trade-Mark, may be outlined in the blade by means of apertures therein and the said projection or projections on the holder may be arranged in such a manner as to enter one or more of said apertures to retain the blade in the holder for shaving or stropping purposes.

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In the form of my invention illustrated in the accompanying drawings the blade holder comprises a pair of hinged members adapted to receive a razor blade therebetween, means upon the holder to detachably retain its members in operative position against the blade, one of said members having the aforesaid projection or projections to co-operate with the aforesaid aperture or apertures in the blade to retain the latter in shaving or stropping position between the said members.

A further feature of my invention is that the means that retain the members of the holder together for use are provided with means in position to co-operate with the blade for positioning it in the holder when the members of the holder are separated to receive the blade, which last named means will release the blade when the retaining means is in position to retain the members of the holder against the blade, so that a blade that is not properly provided with apertures for the previously mentioned projections on the holder will not be retained therein for use.

The patentee describes the manner of inserting the blade in the holder as follows:—

When a blade is to be inserted in the holder the arms or latches 8 are moved to the position shown in fig. 3, to release the members 1, 2; the member 2 is swung away from member 1, and a blade may be laid upon the latter member in the position shown in fig. 3, so that the projections 10 will enter the recesses 3a and the projections 3b of the blade will be behind the projections 10. When the blade is to be retained member 2 is swung upon the blade and the arms or latches 8 are moved inwardly so that the jaws 8a will embrace or grip the members 1, 2 therebetween, whereupon the projections 10 are moved out of the recesses 3a and away from co-operation with the projections 3b of the blade, as indicated in fig. 2. In such position of the parts the blade would be loose between the members 1, 2, which is the operative position of the latter, and in order to retain the blade between said members when clamped against the blade I provide the blade with apertures, indicated at 12, to receive corresponding projections 13 extending inwardly from member 1. The projections 13 may be formed by embossing or pressing the metal of member 1, as indicated in fig. 4. The apertures 12 of the blade are shown related in such a manner to one another as to produce a designation, such as a work or symbol. In the example illustrated the symbol DEFGH is shown produced by means of the apertures 12 stamped in the blade, having different parts of the letters connected by intermediate material of the blade at 14, which serves to strengthen the blade at the apertures while the apertures 12 produce the appearance of the symbol DEFGH. Any other desired word or symbol may be stamped in the blade by means of the apertures 12. The arrangement of the apertures 12 is such with respect to projections 13 of member 1 that when the blade is laid upon said member certain of the apertures 12 of different letters will be in position to receive certain projections 13, whereby when the members 1, 2 are clamped upon the blade by means of the jaws 8a the blade will be prevented from sliding from the holder and will be retained in the desired position. As illustrated in figs. 2 and 3, viewing the holder from the top, the symbol DEFGH stamped in the blade reads correctly.

The specification describes as a feature of the invention, the fact that the position of the projections may be shifted from time to time, so as to engage in other of the apertures of the blade, and it is claimed that this would preclude the

use in a blade holder, of blades made by an unauthorized manufacturer having apertures corresponding in location to those made by the original manufacturer, at an earlier period.

In this connection the specification states:—

One of the features of my invention is that the projections 13 may be formed in holder member 1 at one period to engage certain of the apertures 12 of the blade, whereas at another period said projections 13 may be located in member 1 in a position to receive any other of the apertures 12 of the blade to retain the latter in the holder when the members 1, 2 are clamped together against the blade. By means of the arrangement described, in case an unauthorized manufacturer of the blades should produce blades having apertures that correspond in location to the projections 13 of member 1 that have been made by the original manufacturer at one period, the latter manufacturer, by shifting the position of the projections 13 on member 1 at another period would preclude the use in the holder of such unauthorized blades, because the apertures would not register with the last named projections 13 and the blade would not be retained in the holder because the projections 10 of the arms or latches 8 do not co-operate with the projections 3b of the blade when the latter is clamped between the members 1, 2, by the jaws 8a.

The concluding paragraph of the specification, which I think is self explanatory, might be referred to and is as follows:—

While I have particularly referred to my invention with utilizing a designation, such as a Trade-Mark, name or symbol in a safety razor blade, it will be understood that my invention is not limited to such use since the designation may be formed by apertures or depressions in any desired member to indicate the manufacture of the same, which apertures or designations are so located with reference to positioning means carried by another member as will cause said members to properly register with respect to each other when the apertures or depressions and the projections are in co-operation.

The two claims relied upon are nos. 1 and 2, and they are as follows:

1. A razor blade having apertures or depressions in the form of a designation to indicate the manufacture of the said blade, the said apertures or depressions being so shaped and located that they will co-operate with different holders, such holders having sets of projections differing inter se but such that any one of such sets will prevent such razor blade from sliding or turning on the said holder.

2. A variation of the invention claimed in Claim 1 in which the apertures or depressions in the blade are so shaped and located that they will co-operate with different holders, such holders having sets of projections which have some but not all of the projections in common as and for the purposes set out in the first claim.

It will thus be seen that the patent in question relates to improvements in blade holders, and means for retaining blades in blade holders, in what is generally known as safety razors. Briefly, two rectangular plates which are hinged

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together at one end, with means at the opposite end for clamping or locking the plates together, constitute the blade holder. We may then visualize the blade holder itself as being composed of two rectangular plates hinged together at one end, with locking means at the other, and comprising a space between the plates designed or adapted to embrace lengthwise a shaving blade. But it was of course necessary to provide means for retaining the holder in operative position against the blade; the patentees method of doing this is the following. From one of the plates constituting the holder, the top plate, the patentee suggests the pressing downwards of one or more small projections or lugs, and the blade is provided with apertures adapted to co-operate with these projections. The projections or lugs, when the razor is placed in position, will engage the blade apertures at the appropriate points and thus retain the blade in the holder, when the two plates are locked together. The blade apertures may be related in such a manner to one another as to produce a word or symbol, such as a trade-mark; and in the case of the plaintiff, the blade apertures are in fact so arranged as to indicate the word Valet, which also happens to be the plaintiff's trade-mark. The illustration mentioned in the specification, and shown in the drawings, shows the letters D.E.F.G.H. In the present practise of the plaintiff, the upper plate of the blade holder has etched or indented thereon the word Valet, and the projections referred to are usually punched through one or more of the etched or indented letters, or close thereto, though the position of the projections may be changed from time to time for the purpose mentioned by the patentee, providing the apertures in the blade are made to co-operate with the altered position of the projections. The perforations in the blade are so made, it is claimed, as not to weaken the material of the blade. It is not necessary to consider any other of the elements in the alleged invention.

Whether or not there is invention in Caisman may first be considered. During the course of the trial I formed the opinion that the patent lacked subject matter, but upon a more careful consideration of the case I have reached another conclusion. I think there is subject matter and that the patent should be sustained. The patented improvement, and it is only an improvement, is, I think,

novel; it cannot be said that the blade and blade holder combined in the manner described in the specification does not possess utility; there is no effective evidence of anticipation by prior publication. The general idea or principle of the alleged invention seems an ingenious one, and, I think, involved the exercise of the inventive mind. The means for holding the blade in position has advantages over the means formerly or presently employed in safety razors, for example, the well known Gillette safety razor, where the blade was pushed sidewise into a spring holder, and which, according to the evidence, was difficult at times to remove, and there was also the danger in so doing of the user cutting his hand. Frequently, it was stated in evidence, that safety razors of this type had to be returned to the manufacturer in order to have the blade removed. The plaintiff's blade is very easily inserted in and removed from the blade holder, and with safety, and in this one respect alone the combination is, I think, an improvement over other known methods of retaining a blade in a blade holder. The idea of employing a blade holder of the type described with projections in the upper plate of the holder to co-operate with apertures in the blade, for holding the blade in the required position, must have required some, if only a small amount, of ingenuity. It cannot be said to be a common idea, or a natural development of an old idea, or one which would readily occur to workers in this particular art. No one had previously suggested it. The invention may be slight, and the patent a narrow one, but that does not mean there is not subject matter for a patent. The invention of course produces no new result and, I think, is protected only in respect of the particular means set forth in the specification. The other feature of the invention, that is the provision of apertures in the blade by perforating a word or symbol, such as a trade-mark, may possess very practical merits, but that, I think, is but an optional method of using the invention the substance of which lies in the employment of a particular blade holder, with projections in the holder to co-operate with corresponding apertures or openings in the blade.

The next question for decision is whether the defendants have infringed the plaintiff's patent. The defendants, it is alleged, have sold blades manufactured in imitation of the

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plaintiff's blade and designed to fit the plaintiff's blade holder, but they do not sell the blade holder. The defendants' blade is in all respects the same as the plaintiff's; it is perforated with what is really the word Valet, but with certain distortions which disguise the letters of that word; to the eye the perforations appear as a meaningless series of apertures in the blade. However, the perforations in the defendants' blades, though disguised, enables the defendants' blades to be used in the plaintiff's blade holder, because the defendants' blade has all the apertures that the plaintiff's blade has, and they are positioned precisely as in the plaintiff's blade, but the defendants' blade has additional apertures which perform no function when used in the plaintiff's blade holder. The projections in the plaintiff's blade holder will therefore co-operate with the apertures in the defendants' blade because the exact apertures in the plaintiff's blade are found in the blade of the defendants, and in the same position, and both blades are of the same size and design. If we place the plaintiff's blade on top of the blade sold by the defendants one can plainly see the perforated word Valet in the latter, the additions to or distortions of the perforated letters being concealed by the plaintiff's blade. The defendants' blade was manufactured to be used in the plaintiff's blade holder, that for several reasons is quite obvious. The apertures which the plaintiff has selected for its blade happens to spell its trade-mark, but the real importance of such apertures, so far as this case is concerned, is, that the apertures—not the trade-mark—are definitely positioned to co-operate with the projections in the upper plate of the blade holder. It is the particular holder and the projections in the holder plate, and the apertures in the blade, designed to co-operate the one with the other, that constitutes the invention. If I am correct in holding that there is invention, then the sale of razor blades so apertured that they may co-operate with the projections of the plaintiff's blade holder, is in my opinion an act of infringement subject to the point of law which I shall at once discuss, I think the defendants have infringed the patent here in question.

The question arises whether the sale of the blade alone constitutes infringement of the patent. There is, so far as I know, no Canadian authority directly bearing upon the

point. In the United States, it would appear to be the settled law that if one makes and sells a part of an invention with the intent that it shall be united or used in connection with its other parts, that constitutes an act of infringement. In England, broadly speaking, the law would seem to be that it is not always infringement of a patent for one to make or sell one of the elements entering into the construction of a patent. That principle was laid down in *Townsend v. Haworth*, reported as a note in *Sykes v. Haworth* (1), and later confirmed by the Court of Appeal. But much would seem to depend upon the facts of the case. In the case of *Townsend v. Haworth*, upon appeal, Mellish L.J. stated:—

Selling materials for the purposes of infringing a patent to the man who is going to infringe it, even although the party who sells it knows that he is going to infringe it, and indemnifies him, does not by itself make the person who so sells an infringer. He must be a party with the man who so infringes, and actually infringes.

It is obvious that in many cases the selling of an article, which may constitute an element in the arrangement of something which infringes a patent, should not constitute infringement by the person selling such article. That was held in *Townsend v. Haworth*, and having in mind the facts alleged in the bill upon which that demurrer proceeding was heard, the conclusion would seem one to be expected. The point later arose in *Dunlop Pneumatic Tyre Co. Ltd. v. Moseley & Sons, and India-Rubber and Tyre Repairing Company* (2). In that case the plaintiff was the proprietor of two patents known as the Welch patent, and the Bartlett patent; these patents were for combinations. The first mentioned patent related to improvements in rubber tyres and metal rims or felloes of wheels for cycles and other light vehicles. The other patent was for improvements in tyres or rims for cycles and other vehicles. The plaintiff alleged that the defendants had infringed by selling tyres or parts thereof, and had manufactured and sold the outer tyre or cover (one of the elements of the combinations) with the intent that it should be used by the purchaser, not being a licensee, for the purpose of making one or other of the combinations. One cover sold by the defendants was adapted for use in the manner described in

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(1) (1879) 48 L.J. Eq. 769, at p. 770. (2) (1904) 21 R.P.C. 274.



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Welch's specification, but not necessarily for use solely in that manner. The defendants also made and sold a cover which was capable of being used in the manner described in Bartlett's specification. In neither of the plaintiff's two patents was the cover separately claimed as an element in the combination. The learned trial judge, Mr. Justice Swinfen Eady, while of the opinion that the covers would probably be ultimately used in one or other of those methods, that is to say, the Welch or the Bartlett method, yet he was of the opinion that those were not exhaustive of the purposes to which the cover might be put and that they would be useful for other purposes in connection with other types. In the Court of Appeal, in the same case, Vaughan Williams L.J., adopted the doctrine laid down by Mellish L.J., in *Townsend v. Haworth*, and which I have already mentioned. Stirling L.J., concurred in that doctrine and said:—

The case of *Townsend v. Haworth*, before Sir George Jessel, when Master of the Rolls, and the Court of Appeal, decides that the sale of the covers does not become an infringement merely because the vendor knows the purchaser intends to use the article when sold for the purpose of infringing the patent. *It is necessary for the purpose of constituting the vendor an infringer to show that he has made himself a party to the infringement.*

In this case, the defendants were not the manufacturers of the blades sold by them, they were apparently imported from abroad. The plaintiff has however proven a sale by the defendants of the blade which I have described. This case differs in my opinion from the English cases to which I have referred, in that the defendants themselves sold the blade, I hold, solely for use in the plaintiff's blade holder, and it differs also in that the blade is separately claimed as an element in the combination. There is no evidence that the blade sold by the defendants might be used in blade holders other than the plaintiff's.

The specification and claims of Caisman bear the construction that it is the article made up of the blade holder and blade, and the associated integers, that is protected by the patent. I think the patentee has described and claimed the blade and blade holder in combination, and he has also separately claimed the blade, and the blade holder. While the plaintiff in this proceeding is relying only on claims numbered 1 and 2, still I think, I am permitted to look at the specification and all the claims, in order to ascertain

what it is the patent protects, and if this be done, it is clear, I think, that the patentee has claimed protection for the blade and blade holder in combination and separately. The razor blade was a material element in the invention and not a mere detail which might be varied or omitted. A patent for a combination is infringed by the sale or use of even subordinate parts, if that part is new and material and is the subject of a claim.

It was suggested that the effect of the patent in question was to perpetuate a monopoly once granted but now expired, in connection with the well known Gillette safety razor. I do not think that contention is well founded. The answer is that the Gillette safety razor as once patented is now public property, and may lawfully be manufactured, used or sold, in its entirety by any person. The patent in issue here relates to a particular blade and blade holder, an improvement, which is altogether another thing; that improvement is not the Gillette safety razor. If it happens that the plaintiff's blade holder and blade is adaptable to the structure of the old Gillette safety razor, it would not follow that upon that ground there could not be invention in Caisman's improvement.

The case is a very difficult one, but it is my opinion that the patent in question contains subject matter and its validity must be sustained; I am also of the opinion that the defendants have infringed the patent. The plaintiff consequently succeeds in its action, and costs will follow the event.

*Judgment accordingly.*

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