

The Honorable Stanley A. Bastian

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

HER MAJESTY THE QUEEN IN RIGHT
OF CANADA AS REPRESENTED BY
THE MINISTER OF AGRICULTURE
AND AGRI-FOOD. a Canadian
governmental authority,

Plaintiff,

VAN WELL NURSERY, INC. a
Washington Corporation, MONSON
FRUIT COMPANY, INC., a Washington
Corporation, GORDON GOODWIN, an
individual, and SALLY GOODWIN, an
individual

Defendants.

No. 2:20-CV-00181-SAB

DEFENDANTS' MOTION FOR
PARTIAL SUMMARY JUDGMENT
ON INVALIDITY

Hearing Date: September 30, 2021

Hearing Time: 11:00 am

With Oral Argument

MOTION FOR PARTIAL SUMMARY JUDGMENT ON

LOWE GRAHAM JONES...

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

TABLE OF CONTENTS

I. INTRODUCTION1

II. UNDISPUTED FACTS.....3

III. ARGUMENT.....8

 A. Relevant Legal Standards.....8

 1. Summary Judgement Standard.....8

 2. Invalidity on Summary Judgment.....9

 3. On-Sale Bar.....9

 B. Staccato was Subject to a Commercial Offer for Sale Before the
 Critical Date.....11

 C. Staccato was Ready for Patenting.....14

 D. The SVC/PICO Pre-Critical-Date “Testing Program” for Staccato
 Cannot Defeat Summary Judgment.....18

IV. CONCLUSION.....20

TABLE OF AUTHORITIES

Cases

Abbott Laboratories v. Geneva Pharmaceuticals, Inc., 182 F.3d 1318 (Fed. Cir. 1999).....13

Allen Eng’g Corp. v. Bartell Indus., Inc., 299 F.3d 1354 (Fed. Cir. 2002).....20

Anderson v. Liberty Lobby, Inc., 477 U.S. 248 (1986).....9

Cargill, Inc. v. Canbra Foods, Ltd., 476 F.3d 1359 (Fed Cir. 2007) 9, 11, 12, 20

Enzo Biochem v. Gen-Probe, Inc., 424 F.3d 1276 (Fed. Cir. 2005).....12

Evans Cooling Sys., Inc. v. General Motors Corp., 125 F.3d 1452 (Fed. Cir. 1997)13

Group One, Ltd. v. Hallmark Cards, Inc., 254 F.3d 1045 (Fed. Cir. 2001).....10, 12

Hamilton Beach Brands, Inc. v. Sunbeam Prods., Inc., 726 F.3d 1370 (Fed. Cir. 2013).....14

Helsinn Healthcare S.A. v. Teva Pharmaceuticals USA, Inc., 139 S. Ct. 202 L.Ed.2d 551 (2019)..... 10, 13

J.A. LaPorte, Inc. v. Norfolk Dredging Co., 787 F.2d 1581 (Fed. Cir. 1986).....13

LaBounty Mfg. v. United States ITC, 958 F.2d 1029 (Fed. Cir. 1992).....19

Meds. Co. v. Hospira, Inc., 827 F.3d 1365 (Fed. Cir. 2016).....9

Merck & Cie v. Watson Laboratories, Inc., 822 F.3d 1352 (Fed. Cir. 2016) .. 10, 14

Nelson v. K2 Inc., 2009 U.S. Dist. LEXIS 90 U.S.P.Q.2D (BNA) 1109 (W.D. Wash. February 5, 2009)9

Pennwalt Corp. v. Akzona Inc., 740 F.2d 1581 (Fed. Circ. 1984)19

Pfaff v. Wells Elecs., Inc., 525 U.S. 64 (1998) 1, 10, 11

Special Devices, Inc. v. OEA, Inc., 270 F. 3d 1357 (2001) 13, 19

1 *Woodland Trust v. Flowertree Nursery, Inc.*, 148 F. 3d 1370 (1998).....13

2 **Statutes**

3 35 U.S.C. § 102(b) 1, 9, 10

4 **Other Authorities**

5 2A CHISUM ON PATENTS § 6.02 (2021).....2

6 Leahy-Smith America Invents Act, Pub. L. No. 112-29, effective September 16,
7 2012).....9

8 **Rules**

9 Fed. R. Civ. P. 56(c).....8

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

MOTION FOR PARTIAL SUMMARY JUDGMENT ON

LOWE GRAHAM JONES...

I. INTRODUCTION

U.S. Patent No. PP20,551 (“the ’551 Patent”) is invalid under 35 U.S.C. § 102(b) because the alleged invention was on sale in the United States before the ’551 Patent’s “critical date,” i.e., the date one year before a patent’s priority date. Even a *single* Staccato tree on sale before the critical date invalidates the ’551 Patent. Here, the evidence shows *over 9,200* Staccato trees on sale more than one year before the earliest priority date claimed by the ’551 Patent, March 13, 2002.¹

At least three separate nurseries within the United States commercially sold Staccato before the critical date. The evidence includes emails, orders, acknowledgements, growing contracts, invoices, and related documents establishing that, before the critical date, Staccato was (1) the subject of a “commercial offer for sale” and (2) “ready for patenting.” With evidence establishing beyond any genuine issue of material fact both prongs of the two-part test for invalidity under § 102(b), Defendants discharge their burden to prove that a plant covered by the single claim of the ’551 Patent was “on sale” before the critical date and thus invalid. *See Pfaff v. Wells Elecs., Inc.*, 525 U.S. 55, 64 (1998).

Defendants expect the plaintiff, Her Majesty the Queen in right of Canada as represented by the Minister of Agriculture and Agri-food (“AAFC”), to attempt to create a genuine issue of material fact that Staccato was not ready for patenting

¹ The Parties dispute whether the ’551 Patent may claim priority to a provisional application, U.S. Appl. Serial No. 60/363,574, filed March 13, 2002, because it was incorrectly identified during prosecution of the application giving rise to the ’551 Patent as “60/363,547” (Dkt. No. 55, fn. 2), but it does not matter for the purposes of this motion because all evidence cited pertains to sales or offers for sale occurring before March 13, 2001.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.