

The Honorable Stanley A. Bastian

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...

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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.

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