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Canadian Patents: Injunction available against infringer of a Canadian patent where owner of the patent does not practice the invention in Canada

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In a recent decision, the Canadian Federal Court held that an owner of a Canadian patent may obtain a permanent injunction against infringing use, even if the owner does not use the patented technology in Canada.

The decision was interesting because it is one of the rare Canadian cases where a detailed analysis was performed by the Court of a patent not relating to pharmaceutical subject matter. The patent related to a method for making a crosslinked polymer (a form of plastic) and an apparatus used for performing the method. A plaintiff alleged that defendants infringed the patent and the defendants countered that the patent was invalid.

A large number of issues were raised challenging the validity of the patent. While many of the patent claims were found to be invalid, several were confirmed to be valid and infringed by two defendants who respectively manufactured and sold crosslinked polyethylene pipe in Canada.

The Plaintiff was a Swedish company that owned the Canadian patent. The Court held that the plaintiff was entitled to a permanent injunction enjoining the Canadian defendants from manufacturing, using, offering for sale and/or selling to others for their use the apparatus that infringes the patent and the pipe made from the apparatus until the patent expires.

The Court issued the injunction, even though it confirmed in its findings that the plaintiff did not use the patented technology in Canada. The plaintiff used this technology to a limited extent only in Europe – the pipe that it sold in Canada (through a subsidiary company) was produced using an older technology not covered by the Canadian patent. The Court also held that, given the evidence, the patented technology was only a slight improvement on existing technology.

While all cases turn on the particular evidence of the case, it is noteworthy that the Court found that a permanent injunction was an appropriate remedy, even though the patentee-plaintiff did not practice the patented technology in Canada. The decision has been appealed to the Federal Court of Appeal, so the final word may not be in on this matter yet.

The reasons of the Court are set out in full at *Uponor AB v. Heatlink Group et al.* 2016 FC 320 and may be accessed through the Federal Court website at http://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/143150/index.do

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