

Federal Court



Cour fédérale

Date: 20260216

Docket: T-2620-25

Toronto, Ontario, February 16, 2026

PRESENT: Associate Judge Trent Horne

BETWEEN:

**SOLUCORE INC., SOLUCORE ATLANTIC INC.,
SOLUCORE OTTAWA AND REGION INC.,
SOLUCORE® QUÉBEC INC. AND
XICORE INC**

Plaintiffs

and

**KJA CONSULTANTS INC.,
ATIS ELEVATOR INSPECTIONS, LLC AND
ATIS ASCENDA PARTNERS, LLC**

Defendants

ORDER AND REASONS

I. Background

[1] This is an action for infringement of Canadian patent 2,921,460 [the 460 Patent]. The 460 Patent is claimed to be owned by the plaintiff XiCore Inc and licensed to the other plaintiffs, which are affiliated companies.

[2] In very general terms, the 460 Patent relates to systems and methods for monitoring escalators and elevators, also called lift devices. The statement of claim [Claim] asserts that the 76 claims of the 406 Patent are directed to the management and assessment of elevator and escalator systems to ensure optimal performance; the monitoring of elevators and escalators remotely; and the evaluation and scoring of elevator and escalator maintenance.

[3] There are three defendants. The Claim alleges that each of the defendants provide “systems and services” that infringe every one of the 76 claims in the 406 Patent. “Systems and services” is not a defined term, rather is stated to include those services offered as E2M (Elevator and Escalator Maintenance Program), ATIS Alert, and TEAM (Total Elevator Asset Management). The Claim broadly describes these systems and services. For example, it is alleged that they provide an online portal that facilitates the monitoring and management of lift devices, including through online platforms. The Claim goes on to separately reproduce each claim of the 406 Patent, which is preceded by “the defendants’ systems and services use and/or provide the method of claim [x].”

[4] It is further alleged that the defendants induce infringement of each of the claims.

[5] The Claim is replete with open-ended and non-limiting language. For example:

20. The defendants have engaged, and continue to engage, in a variety of activities that infringe the Asserted Claims. The Defendants also knowingly directed and influenced others to infringe the Asserted Claims, and these infringements would not occur but for the actions of the Defendants.

21. The Defendants’ systems and services incorporate the subject matter disclosed and claimed in the Asserted Claims. The Defendants’ use, distributing, offering for sale, selling,

supplying and/or otherwise making available of vertical transportation management services, technologies and systems to users within Canada is an infringement of the Asserted Claims.

25. The Defendants’ systems and services maintain a database(s) or datastore(s). For example: E2M, ATIS Alert, and TEAM store lift device data or code events, and a mapping for same.

[...]

31. The Defendants’ systems and services use and/or provide the method of claim 1:...

[6] By my count, the Claim uses “for example” or “e.g.” six times, “and/or” 90 times, and “include” or “including” six times when describing the defendants’ products/services and the alleged infringement.

[7] Upon receipt of the Claim, the defendants served a 22-page demand for particulars with almost 200 items and sub-items. The plaintiffs served a response. An excerpt of the demand and response is reproduced below.

<p>7. As to the paragraph 21 allegations that the Defendants’ “systems and services incorporate the subject matter disclosed and claimed in the Asserted Claims” and the Defendants’ “use, distributing, offering for sale, selling, supplying and/or otherwise making available of vertical transportation management services, technologies and systems to users within Canada is an infringement of the Asserted Claims”, please:</p> <p>(a) Identify the “subject matter” referred to in paragraph 21.</p>	<p>This demand is vague, unnecessary and disproportionate. Moreover, this demand seeks legal conclusions and expert opinion. Solucore has provided sufficient particulars for the Defendants to know the case they have to meet and plead in defence, including as detailed at paragraph 21. The interpretation of the “subject matter” of the 460 Patent will be the subject of expert evidence.</p>
<p>(b) Identify what “systems and services” referred to in paragraph 21 incorporate the</p>	<p>This demand is vague, unnecessary and disproportionate. Moreover, this demand seeks legal conclusions and expert opinion</p>

<p>subject matter disclosed and claimed in the Asserted Claims.</p>	<p>(e.g., what is disclosed and claimed in the 460 Patent). Solucore has provided sufficient particulars for the Defendants to know the case they have to meet and plead in defence, including as detailed at paragraphs 21-106. The interpretation of the “subject matter” of the 460 Patent will be the subject of expert evidence. Nevertheless, without limiting the allegations described in the Statement of Claim and without prejudice, the Defendants’ systems and services provided in 2017 and onward including those offerings under the brands E2M (Elevator & Escalator Maintenance Management Program), ATIS Alert, and Total Elevator Asset Management (T.E.A.M or TEAM).</p>
<p>(c) How do the “systems and services” referred to in paragraph 21 incorporate the subject matter disclosed and claimed in each of the Asserted Claims? Particularize how in a claim chart.</p>	<p>This demand is vague, unnecessary and disproportionate. Moreover, this demand seeks legal conclusions and expert opinion (e.g., what is disclosed and claimed in the 460 Patent). The demand for a “claim chart” seeks evidence. Solucore has provided sufficient particulars for the Defendants to know the case they have to meet and plead in defence, including as detailed at paragraphs 21-106. Moreover, the full extent of the Defendants’ infringing activities is known to the Defendants (see Statement of Claim paragraph 116). The Defendants’ infringement of the 460 Patent will be the subject of expert evidence.</p>
<p>(d) Provide full particulars of how each of the “systems and services” referred to in paragraph 21 incorporate the subject matter disclosed and claimed in the Asserted Claims.</p>	<p>See Response no. 74.</p>

[8] Dissatisfied with the responses received, the defendants have brought a motion to strike, with leave to amend, certain paragraphs of the Claim. The defendants also move to strike certain paragraphs of the response to demand for particulars.

[9] At the risk of oversimplifying the debate, the defendants characterize the Claim as a fishing expedition that does not adequately frame the issues for discovery and trial. The plaintiffs say that the Claim discloses a cause of action in patent infringement, sets out the required “who, what, when, where, why, and how,” and that the defendants know the case they have to meet. The plaintiffs further assert that the open-ended language in the Claim does not impair the defendant’s ability to respond, particularly given the asymmetry of knowledge between the parties when it comes to the defendants’ own systems. The plaintiffs argue that their approach to the Claim is reasonable. I disagree with the plaintiffs; the defendants’ motion is granted.

II. Law on Particulars

[10] I begin with reference to what the Federal Court of Appeal said about particulars in *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227:

[16] It is fundamental to the trial process that a plaintiff plead material facts in sufficient detail to support the claim and relief sought. As the judge noted “pleadings play an important role in providing notice and defining the issues to be tried and that the Court and opposing parties cannot be left to speculate as to how the facts might be variously arranged to support various causes of action.”

[17] The latter part of this requirement – sufficient material facts – is the foundation of a proper pleading. If a court allowed parties to plead bald allegations of fact, or mere conclusory statements of law, the pleadings would fail to perform their role in identifying the issues. The proper pleading of a statement of claim is necessary for a defendant to prepare a statement of defence. Material facts frame the discovery process and allow counsel to advise their clients, to prepare their case and to map a trial strategy. Importantly, the pleadings establish the parameters of relevancy of evidence at discovery and trial.

[18] There is no bright line between material facts and bald allegations, nor between pleadings of material facts and the prohibition on pleading of evidence. They are points on a

continuum, and it is the responsibility of a motions judge, looking at the pleadings as a whole, to ensure that the pleadings define the issues with sufficient precision to make the pre-trial and trial proceedings both manageable and fair.

[19] What constitutes a material fact is determined in light of the cause of action and the damages sought to be recovered. The plaintiff must plead, in summary form but with sufficient detail, the constituent elements of each cause of action or legal ground raised. The pleading must tell the defendant who, when, where, how and what gave rise to its liability.

[11] A pleading cannot be speculative. An action at law is not a fishing expedition and a plaintiff who starts proceedings simply in the hope that something will turn up abuses the court's process (*Painblanc v Kastner*, (1994), 58 CPR (3d) 502 at para 4). A patentee cannot use the discovery process to explore potential grounds for their infringement action (*Heli Tech Services (Canada) Ltd v Weyerhaeuser Company Limited*, 2009 FC 592 at para 14).

[12] At the same time, vague or poorly drafted pleadings need not be struck or re-drafted if they can be comprehended by a mind willing to understand. A mind willing to understand is one informed by the full context of the proceedings, including the parties named, the claims pleaded, the remedies sought, and any prior judgment or order (*Bayer Inc v Cobalt Pharmaceuticals Company*, 2017 FC 775 at para 8).

[13] There is no bright line as to the level of detail that must be included in a statement of claim that alleges patent infringement. Each case turns on its own facts.

[14] For example, in *Stryker Corporation v Umamo Medical Inc*, 2016 FC 378 [*Stryker*], allegations of patent infringement that largely recited the language of two claims survived a

motion to strike and request for particulars. The defendants' product, a hospital bed, was a physical device, not a complex process or method. The patent was directed to a siderail apparatus. The defendants were told which physical characteristics of their siderails were alleged to infringe, and were able to review the claim and determine whether their products had the characteristics set out in the claim (para 13).

[15] In *LeddarTech Inc v Phantom Intelligence Inc*, 2017 FCA 224 [*LeddarTech*], the statement of claim recited the language of the claims and asserted that the defendant's Wideview LiDAR systems infringed those claims. The statement of claim also asserted that the defendant "may manufacture, or have manufactured on its behalf, use, sell or license other LiDAR systems or methods comprising said characteristics that LeddarTech is not currently aware of, but that are within the knowledge of Phantom." This was determined to not constitute an open-ended pleading and survived a motion to strike on the ground that it was speculative. The allegations were limited to those systems that comprised certain characteristics and permitted the defendant to fully answer the case against it (para 7).

[16] In *Mostar Directional Technologies Inc v Drill-Tek Corporation*, 2017 FC 575 [*Mostar*], the defendants' motion to strike the statement of claim in a patent infringement action was granted, without prejudice to the right of the plaintiff to commence a new proceeding in the future. The plaintiff had failed to plead sufficient material facts to support its allegations of infringement, particularly "how" the defendants had allegedly infringed the asserted claims of the patents. Simply reciting the language of the claims; simply referring to the claims; or simply identifying the defendant's model names to describe the allegedly infringing acts of the

defendants was insufficient. The defendants were entitled to know the precise way they were alleged to have infringed the 151 asserted claims (paras 31-36).

III. Analysis

[17] It is apparent on the face of the Claim that it does not adequately define the issues, provide sufficient notice to the parties and the Court as to what activities of the defendants are alleged to infringe the 406 Patent, or enable the defendants to plead intelligently in response.

[18] The Claim does not identify the difference between what is described as a system and what is described as a service – two different words are used, so this must be directed to two different things. Again, this is not a defined term. The Claim does not clearly state whether each of the defendants is alleged to offer what is described as E2M, ATIS Alert, and TEAM, or whether these products/services are provided by only one of the defendants.

[19] In *Stryker*, there was a fixed starting point for the defendants – it was alleged that their Umamo Snow Bed and Umamo Cocoon Bed, particularly the siderail, infringed the asserted patent (para 4). Also, in *Stryker*, there were two claims in issue. Here, there are 76. In *LeddarTech*, the defendant knew that its “new Wideview LiDAR system” was alleged to infringe (para 2) and was provided with detailed characteristics that supported the claims for infringement (para 9). With those allegations as an anchor, the Court permitted more open-ended language that allowed the plaintiff to implicate other products that may have the same or similar characteristics.

[20] Here, such a foundation has not been built. The Claim refers to three systems or services, but is couched in language of “including,” “and/or,” and “for example.” The response to the demand for particulars only broadens the nature of the allegations by starting with the Claim, then adding “without limiting the allegations described in the Statement of Claim and without prejudice [...]” Parenthetically, I do not understand how “without prejudice” can be asserted in a response to demand for particulars. These circumstances are much closer to those in *Mostar* where the plaintiff failed to plead “how” the 151 asserted claims were infringed (para 36).

[21] As I said in *Samsung Bioepis Co, Ltd v Janssen Biotech, Inc*, 2024 FC 1715 at para 27, words like “including without limitation” are magnets for a demand for particulars. The use of “including” implies that there may be other grounds for the claimed relief. If other grounds are contemplated, the defendants are entitled to know what they are (see also *International Water-Guard Industries Inc v Bombardier Inc*, 2007 FC 285 at para 13). The plaintiffs may be unaware of everything the defendants are doing, but they must plant a flag and clearly state what they do know.

[22] The Claim, combined with the response to demand for particulars, does not answer the fundamental questions of what product/service of each defendant is alleged to infringe what claims of the 406 Patent. Allowing the plaintiffs to plead undefined “systems and services” and then stack on the expansive language of “including,” “and/or,” “for example,” “without limitation,” and “without prejudice” does not give the defendants clarity as to what their alleged infringing activities are, what claims are stated to be infringed by each product/service, or what

they have done that could constitute inducing infringement. A statement of defence would inevitably be a blanket denial, as opposed to narrowing and defining the issues.

[23] Relevance for discovery is determined by the pleadings. The Claim, as expanded by the response to demand for particulars, would encompass every product or service sold by the defendants relating to lift devices since 2017. Permitting such a pleading to stand would make documentary and oral discovery for the defendants unfair and unmanageable. It gives the impression of a fishing expedition, and a hope that something will turn up on discovery to support the claims of infringement.

[24] The defendants' motion to strike is therefore granted.

IV. Remedy

[25] The defendants' notice of motion asks that certain paragraphs of the Claim be struck, with leave to amend.

[26] The Claim needs to be fundamentally revised. The Claim, demand for particulars and the response to that demand are already unwieldy. Having the challenged paragraphs indicated with a strikethrough and underlining the revisions would result in a pleading that is unintelligible. The Claim will be struck in its entirety, with leave to amend. This will also have the practical effect of removing the demand for particulars and the response from the equation.

V. Costs

[27] The Court has complete discretion over the amount and allocation of costs (subrule 400(1) of the *Federal Courts Rules*, SOR/98-106 [Rules]).

[28] As the successful parties, the defendants are entitled to their costs.

[29] The outcome of this motion was not a close call. The broad allegations of infringement in the Claim, as expanded by the response to the demand for particulars, was simply not in line with the Rules and relevant jurisprudence. With reference to Column 3 of recently revised Tariff B, costs are fixed at \$2,750.00.

[30] Costs are payable in any event of the cause, not forthwith. While the propriety of the questions set out in the demand for particulars was not before me, it is self-evident that many of the particulars requested went far beyond obtaining clarity what was alleged in the Claim and sought evidence. The defects in the Claim were manifest. Serving a demand for particulars with scores of items, where many of them would not be ordered answered if contested, added delay and expense to the proceeding.

ORDER in T-2620-25

THIS COURT ORDERS that:

1. The statement of claim is struck, with leave to amend.
2. A fresh as amended statement of claim shall be served and filed within 30 days of the date of this order.
3. Within 45 days of the date of this order, the parties shall write to the Court, preferably jointly, with a proposed timetable and mutual availability for a case management conference.
4. Costs of the motion are fixed at \$2,750.00, payable by the plaintiffs to the defendants in any event of the cause.

"Trent Horne"
Associate Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2620-25

STYLE OF CAUSE: SOLUCORE INC., SOLUCORE ATLANTIC INC.,
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INSPECTIONS, LLC AND ATIS ASCENDA
PARTNERS, LLC

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