Federal Court of Appeal

Cour d'appel fédérale

Date: 20260414

Docket: A-288-25

Citation: 2026 FCA 71

2026 FCA 71 (CanLII)

CORAM: **MONAGHAN J.A.**
HECKMAN J.A.
ROCHESTER J.A.

BETWEEN:

MCCAIN FOODS LIMITED

Appellant

and

J.R. SIMPLOT COMPANY AND SIMPLOT CANADA (II) LIMITED

Respondents

Heard at Ottawa, Ontario, on April 14, 2026.
Judgment delivered from the Bench at Ottawa, Ontario, on April 14, 2026.

REASONS FOR JUDGMENT OF THE COURT BY: ROCHESTER J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on April 14, 2026).

ROCHESTER J.A.

[1] This appeal concerns a decision by the Federal Court (2025 FC 1078) addressing allegations of infringement and invalidity of McCain Foods Limited's [McCain] Canadian Patent No. 2,412,841 [the '841 Patent]. The parties are competitors in the French fry industry. They produce and sell frozen French fries.

[2] The ’841 Patent claims a process for treating vegetables and fruit before cooking in order to reduce their resistance to cutting. This process is “characterized by the application of a high electric field directly to the vegetables and/or fruits” without preheating them. As McCain states, it invented and patented the process of using high electric fields to treat potatoes to make them easier to cut into strips without cooking them in the process.

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[3] The Federal Court found that a person skilled in the art of food process engineering at the date of publication of the ’841 Patent would have been aware that the term “high electric field” had no known or established definition in the art. Central to this appeal is the Federal Court’s conclusion that such a skilled person would understand the term “high electric field” as used in Claim 1 to refer to electric fields in the range of 2 to 200 volts per centimeter [V/cm]. As the Respondents [Simplot] use a technology known as pulsed electric field, in the range of 1,000 V/cm or more, the Federal Court concluded that the pulsed electric field systems used by Simplot did not infringe the ’841 Patent during its lifetime. The Federal Court equally found that <u>if</u> the term “high electric field” were construed to cover the electric fields of the type used by Simplot, then the two claims at issue would be invalid for (i) being broader than the invention made or contemplated by the inventors, and (ii) lack of demonstrated or soundly predicted utility.

[4] McCain submits that the Federal Court erred in construing the term “high electric field”. Under a broader construction of that term, McCain argues that Simplot infringes the ’841 Patent. McCain further argues that the Federal Court’s failure to properly construe the term “high electric field” led to reviewable errors in assessing the validity of the ’841 Patent.

[5] The appellate standards of review are applicable to this appeal: questions of law are reviewed on a standard of correctness and findings of fact or mixed fact and law, from which there is no extricable question of law, are not reversed absent a palpable and overriding error (*Housen v. Nikolaisen*, 2002 SCC 33).

[6] The parties disagree, however, on whether the alleged issues with the claim construction raise questions of law or questions of mixed fact and law. While in theory the interpretation of a patent claim is a question of law, such claims are interpreted from the point of view of a person skilled in the art – with the effect that expert evidence is often considered in determining how such a person would have understood the terms in a claim at the date of publication (*Whirlpool Corp. v. Camco Inc*., 2000 SCC 67 at para. 61; *Google LLC v. Sonos Inc*., 2024 FCA 44 at para. 6 [*Google*]; *Eli Lilly Canada Inc. v. Apotex Inc*., 2024 FCA 72 at para. 29). Where the interpretation of a patent claim turns on the appreciation of expert evidence as to how a skilled person would understand specific terms, the Federal Court is entitled to deference and the standard of palpable and overriding error applies (*Google* at para. 6; *Biogen Canada Inc. v. Pharmascience Inc.*, 2022 FCA 143 at para. 38).

[7] We are unable to agree with McCain's submission that the Federal Court's conclusion on claim construction, in particular the term "high electric field", should be reviewed for correctness. We find that in construing the term "high electric field" in Claim 1, the Federal Court's claim construction was based on its appreciation of the expert evidence after having considered both sides of the debate in considerable detail. Consequently, in order for this Court to intervene, we must be satisfied that there is a palpable and overriding error.

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[8] Having carefully reviewed the Federal Court's decision, and having considered McCain's written and oral submissions, we have not been satisfied that the Federal Court committed a reviewable error in construing the term "high electric field" in Claim 1.

[9] The Federal Court summarized the applicable principles of claim construction in paragraphs 16 through 18 of its decision. McCain does not dispute that the Federal Court correctly articulated those principles. Rather, McCain argues that the Federal Court failed to apply these principles and imposed a construction that is disconnected from the claims and the disclosure. In particular, McCain submits that the Federal Court failed to purposively construe the term "high electric field" when it imposed a rigid numerical limit, thereby excluding pulsed electric fields. This was, in McCain's view, unduly restrictive. McCain underscores that the '841 Patent does not impose a numerical limit on the term "high electric field".

[10] While the '841 Patent does not impose a numerical limit, the Federal Court, in an extensive analysis, considered the common general knowledge in the areas of electric fields, and their impact on plant tissues and food processing, along with pulsed electric field treatments in food processing, before concluding that a skilled person reading the patent at the date of publication would understand the term "high electric field" as used in Claim 1 to mean a field in the range of about 2 to 200 V/cm. This conclusion was equally informed by the language of the claims, including the absence of a reference to pulses, and a detailed consideration of those claims in the context of the specification. We find no palpable and overriding error in this conclusion.

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[11] We do not accept McCain's submission that the Federal Court prioritized the disclosed embodiments or created artificial limitations based on its understanding of the biological mechanism in the disclosed embodiments. The Federal Court acknowledged that a patent claim is not limited to the preferred embodiments described in the disclosure, but rightly, in our view, considered that the preferred embodiments are not irrelevant and may be considered as part of purposive construction (*Mediatube Corp. v. Bell Canada*, 2019 FCA 176 at para. 11). Having carefully considered the Federal Court's analysis of the preferred embodiments, being the inventors' discussion of their testing, we find no reviewable error.

[12] McCain pleads that the Federal Court effectively ignored that the '841 Patent refers to pulsed electric fields and draws a connection between pulsed electric fields and the application of high electric fields to extracting sugar from beets. We do not agree that the Federal Court discounted this alleged connection. On the contrary, the Federal Court addressed McCain's position on the language used in the disclosure and then set out in detail the three reasons why it considered that McCain's reading was not determinative of the construction issue. While McCain states that the Federal Court was led astray by the expert evidence, and thus overlooked the language of the patent, we are of the view that the Federal Court was entitled to find, based on the evidence before it, that, among other things, a skilled person reviewing the '841 Patent would not read the reference to extracting sugar from beets in isolation from the rest of the disclosure, nor would they connect the dots back to the earlier reference to pulsed electric fields without a direct reference to pulsed electric fields or pulses. The Federal Court was equally entitled to find that in light of the common general knowledge cited by the experts, a skilled person would view the reference to "a high electric field, such as is used for extracting sugar

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from beet and precooking fries" as referring to electric fields other than those that were understood at the time to adversely affect foods designed for consumption.

[13] Finally, we are not persuaded by McCain's submission that the Federal Court misapprehended the common general knowledge, and in particular, did so in order to unduly narrow the '841 Patent's scope to a subtype of high electric field. McCain emphasizes that the Federal Court's understanding that pulsed electric fields are different in kind to "high electric fields", rather than simply a question of degree of treatment, is fundamentally flawed. As stated previously, we find no palpable and overriding error in the Federal Court's comprehensive analysis of the common general knowledge and its conclusion as to how a skilled person would understand the term "high electric field" as used in the claims at issue.

[14] In light of our conclusion on the issue of construction, it is therefore not necessary to address McCain's arguments on the issues of validity.

[15] We will therefore dismiss the present appeal with costs fixed in the all-inclusive amount of $30,000, as agreed between the parties.

"Vanessa Rochester"

J.A.

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FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECOR

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