

Date: 20070829

Docket: T-1113-04

Citation: 2007 FC 870

Ottawa, Ontario, August 29, 2007

PRESENT: The Honourable Mr. Justice Hugessen

BETWEEN:

RIVARD INSTRUMENTS INC.

Plaintiff

and

IDEAL INSTRUMENTS INC.

Defendant

REASONS FOR ORDER

**(Delivered from the Bench at Ottawa, Ontario,
on August 29, 2007)**

[1] I am going to dismiss this motion for summary judgment brought by the defendant.

[2] In my view there is clearly a genuine issue for trial in this case.

[3] The plaintiff holds a patent for a magnetically detectable cannula, apparently used in the meat packing industry, so as to detect broken hypodermic needles in meat which is being prepared for human consumption.

[4] The relevant claim is for a cannula composed in part of ferritic stainless steel.

[5] The defendant moving for summary judgment says that its cannula is made not of ferritic stainless steel but of duplex stainless steel.

[6] The plaintiff's expert witness says that duplex stainless steel, is itself a composition, one of whose components is ferritic stainless steel, and that that component or "phase" as he calls it, is separately detectable by microscopic analysis of the final product.

[7] That opinion appears to be disagreed with by the defendant's expert witness apparently basing himself on what he considers to be a definition of the words ferritic stainless steel in the disclosure.

[8] Whether or not he is right in that pretention I do not think it appropriate for me to comment. Equally I do not think it appropriate for me to comment on whether or not the plaintiff's expert witness is correct.

[9] Clearly the two experts conflict. Both were cross-examined at some length. Neither resiled from his opinion. That seems to me is the classic circumstance in which the Court ought not to grant summary judgment and I would cite *Trojan Technologies, Inc. v. Suntec Environment Inc.* (2004) 31 C.P.R. (4th) 241 (F.C.A.) as a sufficient authority for that proposition.

[10] Accordingly the case must go to trial.

[11] The motion for summary judgment will be dismissed with costs.

“James K. Hugessen”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: RIVARD INSTRUMENTS INC. v.
IDEAL INSTRUMENTS INC.

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: August 29, 2007

REASONS FOR ORDER: HUGESSEN J.

DATED: August 29, 2007

APPEARANCES:

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