

Between:

PARK-UR-SELF (CANADA) LTD.  
IMPERIAL PARKING LIMITED and  
THE PARK-UR-SELF SYSTEM, INC.,

Plaintiffs,

- and -

CSI PARKING SYSTEMS INC.,

Defendant.

### **REASONS FOR ORDER**

#### **ROULEAU, J.**

On Monday, September 29, 1997, I entertained the following motion as filed by the Defendant in this matter:

1. An Order authorizing the filing by the Defendant of the affidavit of Blain Halina sworn September 24, 1997 in respect of the Defendant's motion for summary judgment herein.
2. To the extent deemed necessary, an Order providing such further directions in relation to reply evidence or further cross-examination as may be required.
3. An Order adjourning the hearing of the summary judgment motion to such further date as the Associate Chief Justice may designate.

Counsel for the Defendant submits that it is necessary to file the Affidavit of Mr. Blain Halina since this evidence contradicts directly the evidence given on cross-examination by the plaintiff's principal witness, Mr. Paul Clough, on a very material issue, namely, whether or not Mr. Clough at the time was the true and sole inventor of the patent in dispute.

This matter was originally set down by the Associate Chief Justice to proceed by way of a summary judgment application and was to be heard on Tuesday, October 7, 1997. Apparently the Court was satisfied that all relevant documents had been filed, cross-examinations had occurred and the issues could be narrowed down in order that the matter could be disposed of by way of summary judgment hearing.

On June 24, 1997, Mr. Paul Clough, the alleged inventor, attended for cross-examination in connection with the summary judgment application. During the course of this examination, a number of questions were not answered by the plaintiff Mr. Clough. As a result the defendant moved before the court on July 8, 1997, seeking relief by way of an order directing Mr. Clough to answer a number of questions dealing with the naming of the inventor in the application, the scope of the invention and obviousness or anticipation. It is alleged by counsel for the defendant that answers to these and a number of other questions are relevant and essential in order for the motion for summary judgment to proceed.

The motion was entertained by this court on July 16, 1997. The court ordered that Mr. Clough reattend and that he answer a certain number of outstanding questions. The motion went on to indicate that no collateral questions were to be asked or answered by Mr. Clough. This order was appealed by the defendant on July 17, 1997, and a cross-appeal was filed by the plaintiffs on July 18. The matter has not yet been scheduled for hearing by the Federal Court of Appeal.

A review of the pleadings and the outstanding orders in this file as well as the present motion have satisfied me that this particular cause of action should not and cannot be entertained by way of summary judgment application, but should proceed to trial. It is evident that a number of issues are in dispute, such as who is the inventor and obviousness. The scope of the invention is also still the subject of dispute. What convinces me beyond doubt that the matter should proceed to a full-blown trial is this motion brought before me on September 29, 1997, where the court is asked for leave so the defendant can file an additional affidavit, the purpose of which is to question the credibility of the plaintiffs' principal witness, Mr. Paul Clough. There is obviously a conflict in the evidence regarding inventorship; that being the case it is imperative that a trial judge be afforded the opportunity of *viva voce* evidence to resolve the issues between these parties. I am satisfied that no summary judgment application could persuade a judge to make a final determination when credibility respecting these principal parties is still unresolved.

I am hereby ordering that the hearing for summary judgment application set for October 7, 1997, be set aside; that the parties shall make a joint application to the Associate Chief Justice for a time, place and hearing of a trial of this matter; that the motion before me is now moot since the defendant may call the witness at trial.

(Sgd.) "P. Rouleau"  
Judge

September 30, 1997  
Vancouver, British Columbia

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**COURT NO.:** T-1009-95

**STYLE OF CAUSE:** PARK-UR-SELF (CANADA) LTD.,  
IMPERIAL PARKING LIMITED and THE PARK-UR-SELF SYSTEM,  
INC.

- and -

**CSI PARKING SYSTEMS INC.**

**PLACE OF HEARING:** Vancouver, BC

**DATE OF HEARING:** September 29, 1997

**REASONS FOR ORDER OF ROULEAU, J.**

**DATED:** September 30, 1997

**APPEARANCES:**

**Mr. Michael Manson** for Plaintiffs

**Mr. Paul Smith** for Defendant

**SOLICITORS OF RECORD:**

**Smart & Biggar** for Plaintiffs  
Vancouver, BC

**Paul Smith Intellectual Property Law** for Defendant  
Vancouver, BC