

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20180627**

**Docket: A-395-16**

**Citation: 2018 FCA 125**

**CORAM: GAUTHIER J.A.  
DE MONTIGNY J.A.  
GLEASON J.A.**

**BETWEEN:**

**ARCTIC CAT, INC. and ARCTIC CAT  
SALES, INC.**

**Appellants**

**and**

**BOMBARDIER RECREATIONAL  
PRODUCTS INC.**

**Respondent**

Heard at Ottawa, Ontario, on June 27, 2018.

Judgment delivered at Ottawa, Ontario, on June 27, 2018.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**THE COURT**

**Federal Court of Appeal**



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**REASONS FOR JUDGMENT OF THE COURT**

[1] Arctic Cat, Inc. and Arctic Cat Sales, Inc. (collectively Arctic Cat) appeal from the judgment of Justice Roy of the Federal Court (2016 FC 1047) dismissing their action for infringement against Bombardier Recreational Products Inc. (Bombardier) with respect to Canadian Patent No. 2,322,738 (the 738 Patent).

[2] Bombardier discontinued its cross-appeal. There is thus no appeal with respect to the counterclaim before us.

[3] In this appeal, Arctic Cat only asserts claims 11 and 16 of the 738 Patent, which it says are valid and infringed. As the Federal Court found that on a proper construction of these claims Bombardier did not infringe, Arctic Cat challenges the Federal Court's construction of the two claims focusing its submissions on the expression "ignition pattern" and most especially on the last portions of these claims, which deal with the modification of the ignition pattern.

[4] The Federal Court also concluded that even if it adopted the construction proposed by Arctic Cat to find infringement, claims 11 and 16 would nevertheless be invalid due to obviousness. Arctic Cat submits that the Federal Court erred in its identification of the inventive concept of the 738 Patent (as exemplified in its reasons at paragraph 276), asserting that the Federal Court interpreted the inventive concept incompletely (i.e. by leaving out the words "for that temperature").

[5] To decide this appeal, we need only deal with Arctic Cat's submissions on obviousness, as it must succeed on both points to succeed in this appeal.

[6] In our view, the obviousness argument fails as we see no reviewable error in the Federal Court's treatment of this issue, which rests to a large extent on its appreciation of the expert testimony and prior art. We are satisfied that the Federal Court understood the inventive concept of the 738 Patent and made no palpable and overriding error in assessing whether there were any

inventive differences between it and the prior art as considered in light of the relevant common general knowledge.

[7] In light of the foregoing, there is no need to make any comment in respect of inventorship.

[8] As found by the Federal Court, Bombardier does not infringe any valid asserted claims. This appeal will therefore be dismissed, with costs.

“Johanne Gauthier”

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J.A.

“Yves de Montigny”

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J.A.

“Mary J.L. Gleason”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-395-16

**STYLE OF CAUSE:** ARCTIC CAT, INC. and ARCTIC  
CAT SALES, INC. v.  
BOMBARDIER RECREATIONAL  
PRODUCTS INC.

**PLACE OF HEARING:** Ottawa, Ontario

**DATE OF HEARING:** JUNE 27, 2018

**REASONS FOR JUDGMENT OF THE COURT BY:** GAUTHIER J.A.  
DE MONTIGNY J.A.  
GLEASON J.A.

**DELIVERED FROM THE BENCH BY:** GAUTHIER J.A.

**APPEARANCES:**

Ronald Dimock FOR THE APPELLANTS  
Angela Furlanetto  
Ryan Evans

Marek Nitoslawski FOR THE RESPONDENT  
David Turgeon  
Michael Shortt

**SOLICITORS OF RECORD:**

DLA Piper (Canada) LLP FOR THE APPELLANTS  
Toronto, Ontario

Fasken Martineau DuMoulin, LLP FOR THE RESPONDENT  
Montreal, Quebec