

Federal Court of Appeal



Cour d'appel fédérale

Date: 20210113

Docket: A-139-19

Citation: 2021 FCA 3

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

BETWEEN:

**TENSAR TECHNOLOGIES, LIMITED,
TENSAR CORPORATION LLC and
TENSAR INTERNATIONAL
CORPORATION**

Appellants

and

ENVIRO-PRO GEOSYNTHETICS, LTD.

Respondent

Heard by online video conference hosted by the registry, on November 23, 2020.

Judgment delivered at Ottawa, Ontario, on January 13, 2021.

REASONS FOR JUDGMENT BY:

LOCKE J.A.

CONCURRED IN BY:

**GAUTHIER J.A.
DE MONTIGNY J.A.**

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REASONS FOR JUDGMENT

LOCKE J.A.

I. Background

[1] This is an appeal from a decision of the Federal Court (2019 FC 277, per Justice Michael D. Manson (the Trial Judge)) that found that several claims of the appellants' Canadian Patent

No. 2,491,858 (the 858 Patent) were valid but not infringed by the respondent. A cross-appeal by the respondent was discontinued shortly before the hearing.

II. Patent and Claims in Issue

[2] The 858 Patent is entitled “Geogrid or Mesh Structure.” As indicated in the Background of the Invention section, a geogrid is a grid of strands (also called ribs) that are interconnected either at bars that run across the grid or at junctions (also called nodes or intersections). The geogrids described in the 858 Patent are made by stretching a perforated starting plastic (or polymer) material first in one direction, referred to as the machine direction (MD), and then in a second, perpendicular direction, referred to as the transverse direction (TD). The stretching increases the size of the perforations (to make mesh openings), and strengthens and reduces the thickness of the starting material. The 858 Patent indicates that the primary purpose of a geogrid is to strengthen or reinforce soil.

[3] The invention of the 858 Patent concerns an arrangement of perforations in the plastic starting material in a hexagonal array as shown in Figure 1 thereof:

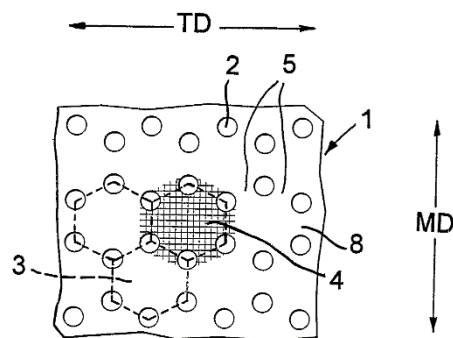


Fig.1

[4] This starting material is then stretched in the machine direction, yielding what is shown in Figure 2, and then in the transverse direction, resulting in the geogrid shown in Figure 4:

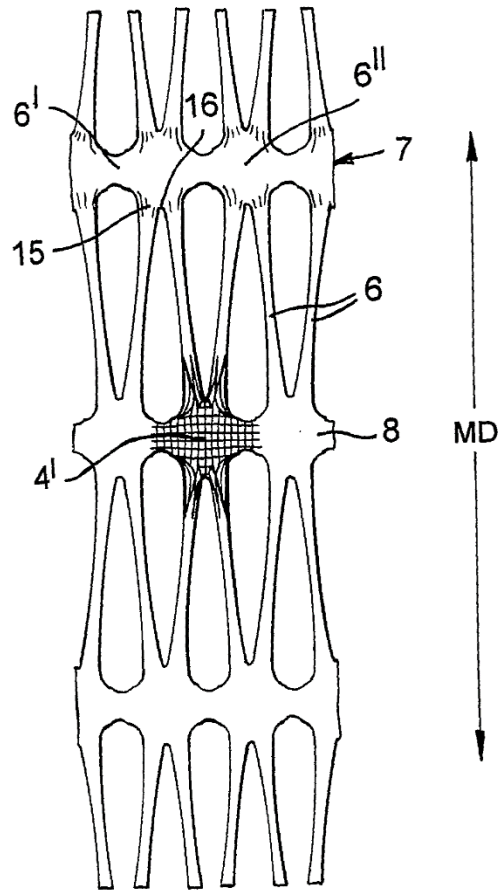


Fig.2

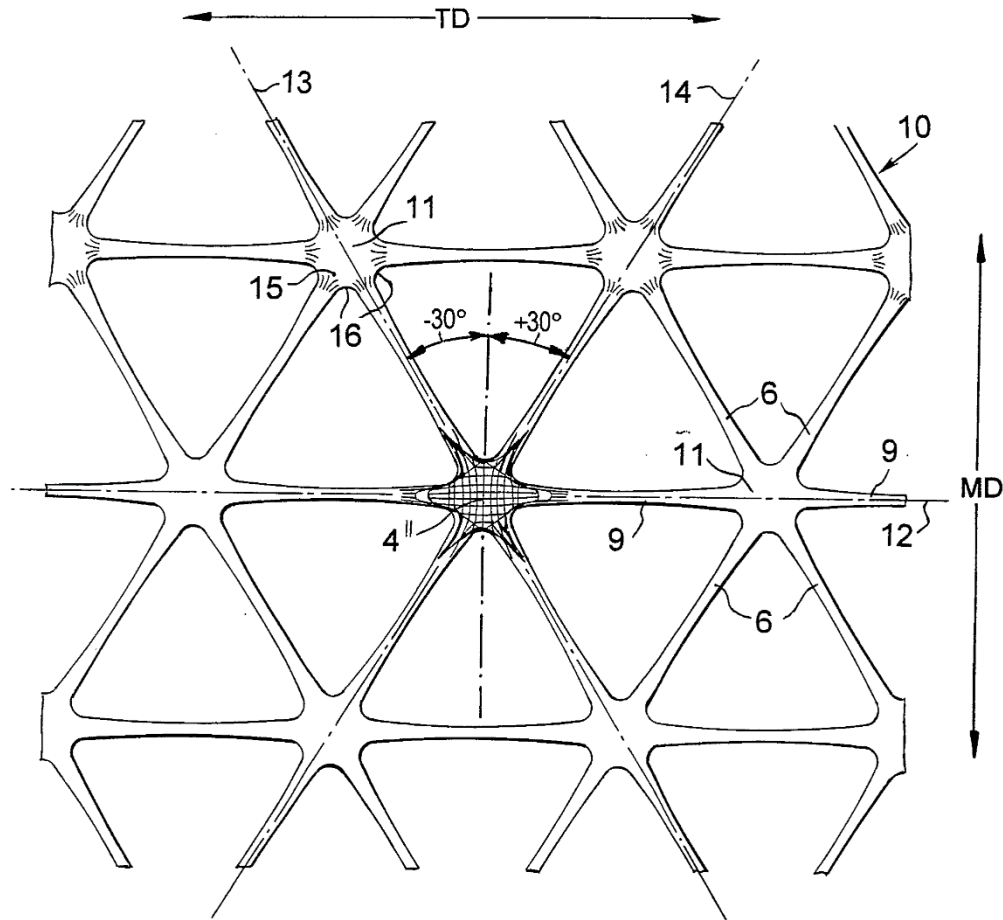
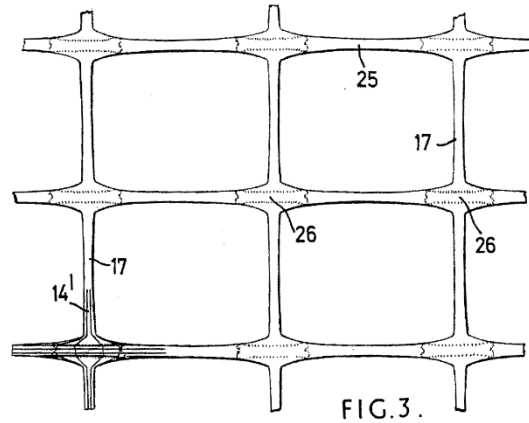


Fig.4

[5] Previous biaxially stretched geogrids had good stability in the machine direction and the transverse direction, but the geogrid described in the 858 Patent has better stability diagonally than what was previously on the market. The 858 Patent mentions two patents as examples of prior art having less diagonal stability: U.S. Patents Nos. 4,374,798 (Mercer 798) and 5,053,264. Below is Figure 3 from Mercer 798 showing an example of the rectangular geogrid contemplated therein:



[6] The 858 Patent also mentions U.S. Patent No. 3,386,876 (Wyckoff) as disclosing a mesh structure having triangular openings formed by stretching a perforated plastic starting material. The 858 Patent describes the mesh structure in Wyckoff as heavy and relatively weak. Figure 10 of Wyckoff shows the triangular mesh structure:

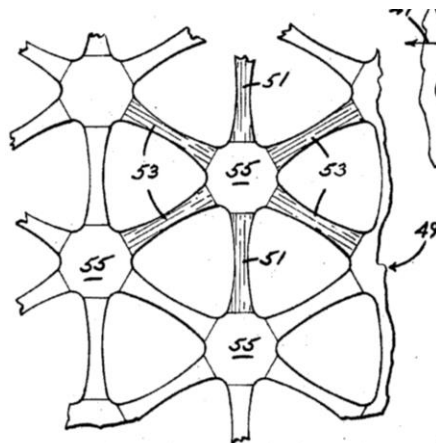


Fig. 10

[7] Though the strands (or ribs) described in Wyckoff are formed by stretching, it is stated several times therein that the junctions (or junctures) are not stretched.

[8] The claims of the 858 Patent in issue are claims 6 to 8, 11 to 13 and 18 to 31. However, all of these except claims 6 and 18 are dependent, either directly or indirectly, on one of independent claims 6 or 18. For the purposes of this appeal, it is necessary to address only these two independent claims. The text of these claims is as follows:

6. A geogrid made by stretching and biaxially orienting a plastics starting material which was provided with an array of holes, the geogrid comprising:

a first set of substantially straight oriented strands extending at an acute angle to a first direction;

a second set of substantially straight oriented strands extending at an acute angle to the first direction and, as considered in a second direction at right angles to the first direction, alternate (angled) strands of the two sets being angled to the first direction by substantially equal and opposite angles;

further substantially straight oriented strands extending in said second direction; and

junctions each interconnecting four of the angled oriented strands and two of the further oriented strands, at substantially each junction the crotch between each pair of adjacent strands being oriented in the direction running around the crotch, whereby there is continuous orientation from the edge of one strand, around the crotch and to the edge of the adjacent strand.

[...]

18. A method of making a biaxially oriented plastics material geogrid, comprising:

providing a plastics sheet starting material which has holes in an array of hexagons of substantially identical shape and size so that substantially each hole is at a corner of each of three hexagons, there being within the hexagon no holes of a size greater than or equal to the size of the first-mentioned holes;

applying a stretch in a first direction to stretch out strand-forming zones between adjacent holes on sides of the hexagons and form oriented strands from such zones; and

applying a stretch in a second direction substantially at right angles to said first direction to stretch out strand-forming zones between adjacent holes on the sides of the hexagons and form oriented strands from the latter zones, whereby centre portions of the hexagons form junctions interconnecting the oriented strands, the stretching being applied to such an extent that the orientation of the strands extends into substantially each junction so that at substantially each junction, the

crotch between each pair of adjacent strands is oriented in the direction running around the crotch, whereby there is continuous orientation from the edge of one strand, around the crotch and to the edge of the adjacent strand.

[9] Moreover, the parties agree that the respondent's allegedly infringing products (called "Tri-Grid") incorporate all of the elements of these claims except the last few words of each:

In claim 6:

[...] at substantially each junction the crotch between each pair of adjacent strands being oriented in the direction running around the crotch, whereby there is continuous orientation from the edge of one strand, around the crotch and to the edge of the adjacent strand.

In claim 18:

[...] the stretching being applied to such an extent that the orientation of the strands extends into substantially each junction so that at substantially each junction, the crotch between each pair of adjacent strands is oriented in the direction running around the crotch, whereby there is continuous orientation from the edge of one strand, around the crotch and to the edge of the adjacent strand.

[10] The expression of principal dispute between the parties is the same in both claims: "[...] whereby there is continuous orientation from the edge of one strand, around the crotch and to the edge of the adjacent strand."

[11] One important word in this expression, "orientation", is defined in the 858 Patent at page 5:

The term "oriented" means molecularly-oriented. In general, when an oriented strand is referred to, the preferred direction of orientation is longitudinal of the strand.

[12] As explained by the Trial Judge, the plastic starting material described in the 858 Patent has two phases of morphology: crystalline and amorphous. Both are randomly oriented prior to stretching. Stretching the material tends to orient the molecules in the direction of the stretch. This orientation increases the strength of the material in that direction.

[13] The expression in dispute defines the claimed orientation as being “around the crotch.” This direction of the orientation is therefore important. The parties agree that “to achieve orientation in the direction running around the crotch, the molecules in the crotch must align predominantly in a direction tangential to the curvature of the crotch” (see paragraph 100 of the Trial Judge’s reasons).

[14] Another important word in the expression in dispute is “continuous”. The parties agree that “continuous” means “uninterrupted” (which was acknowledged as the dictionary definition), but they disagree on how “continuous” (or “uninterrupted”) should be interpreted in the context of molecular orientation. The appellants argue that “continuous orientation” should be construed in terms of the reduction in thickness of the plastic starting material that results from stretching. They note that the disclosure of the 858 Patent describes the invention in terms of thickness reduction, and argue that this is how the scope of the claims should be determined. For its part, the respondent focuses on the reference to molecular orientation, and argues that “continuous orientation” should be construed by considering interruptions, both in the degree and in the direction, of the orientation of molecules.

III. Federal Court Decision

[15] In his decision, the Trial Judge discussed the legal principles applicable to claim construction, including the person of skill in the art from whose point of view the claims of the 858 Patent are to be construed (the POSITA), and the common general knowledge that the POSITA would have. As regards the POSITA, the Trial Judge concluded as follows:

[82] Having considered all of the evidence before the Court, I find that:

- a. A POSITA, in the context of the '858 Patent, would combine, through experience, two branches of engineering:
 - i. mechanical, chemical or textile engineering with a specialisation in synthetic materials or several years' experience with synthetic textile and related materials manufacturing systems, but with limited knowledge of the molecular structure-property relationships of plastics or polymers [the Production Engineer]; and
 - ii. civil or military engineering with a specialisation in geotechnical or pavement engineering or 5 to 7 years' experience with the use of synthetic textile, meshes, nets and grids in the construction industry [the Applications Engineer].
- b. The Production Engineer is principally concerned with the methods of processing the starting material and the effects of these on the properties of the final products, here, production of polymer mesh or geogrid products, with limited knowledge of the molecular structure-property relationships of plastics or polymers. The Applications Engineer is principally concerned with the physical and mechanical properties of the final products, their intended functions, and their long term durability and operational efficiency in various applications, here, the application and use of meshes and geogrids for construction applications.
- c. The POSITA would either be a Production Engineer with enough experience in industry (5 to 7 years) to have the knowledge of an Applications Engineer, or vice versa.

[16] Of key relevance in this appeal is the indication that the Production Engineer has “limited knowledge of the molecular structure-property relationships of plastics or polymers.”

[17] The Trial Judge noted that the parties had agreed that the relevant common general knowledge includes Wyckoff, Mercer 798 and another Mercer Patent (U.S. Patent No. 5,269,631 (Mercer 631)). The Trial Judge noted that Mercer 631 introduced the term “continuous orientation”. With regard to Wyckoff, the Trial Judge noted that although the ribs of the geogrid described therein are stretched, no stretching is applied to the junctions. This distinguishes Wyckoff from the 858 Patent.

[18] The Trial Judge also stated:

[87] Additionally, at the relevant dates, the POSITA would have had the following common general knowledge:

- i. basic features of polymers at the molecular level;
- ii. there is some molecular orientation inherent to the stretching of a polymer when it is drawn beyond its yield point in the direction of the stretch;
- iii. “continuous” means uninterrupted;
- iv. “orientation” means molecular orientation;
- v. the direction of orientation is relative to a reference direction;
- vi. various methods are used to make geometric polymer structures, including geogrids, by way of uniaxial or biaxial stretching; and
- vii. when a section of a starter polymer undergoes a reduction in thickness, that is an indication that stretching has occurred and that some degree of orientation is present.

[19] In his claim construction analysis, the Trial Judge noted:

[100] The experts agreed that:

- i. orientation is defined in the '858 Patent and means molecular orientation;
- ii. in both claims, the direction of the continuous orientation is important;
- iii. a reference point is required when referring to the direction of orientation, and that reference point in both claims is the curvature of the crotch;
- iv. there is some orientation inherent to the stretching of a polymer beyond its yield point;
- v. 100 percent crystallization of a polymer is practically impossible;
- vi. to achieve orientation in the direction running around the crotch, the molecules in the crotch must align predominantly in a direction tangential to the curvature of the crotch; and
- vii. "continuous" means "uninterrupted".

[20] The Trial Judge considered the testimony of experts on both sides, Dr. Alan McGown for the appellants (the plaintiffs at trial) and Dr. Phillip Choi for the respondent (the defendant at trial). The Trial Judge's discussion of the experts' views on the meaning of "continuous" in the context of the expression "continuous orientation [...] around the crotch" in the 858 Patent is found at paragraphs 102 to 120 of his reasons.

[21] The Trial Judge did not entirely accept the evidence of either expert. Dr. McGown focused on the reduction in thickness as the plastic material is stretched, and whether some amount of thickness reduction occurs at every point around the crotch. The Trial Judge accepted that the 858 Patent discusses thickness reduction as being related to molecular orientation around the crotch, and that thickness reduction need not be uniform throughout the crotch, but he found

that the mere presence of some amount of thickness reduction was insufficient, and that “continuous orientation” must mean something more. The Trial Judge concluded that Dr. McGown’s construction of “continuous orientation” gave insufficient meaning to the word “continuous”, and “is simply too broad and not a purposive construction.”

[22] Dr. Choi construed the term “continuous orientation” in terms of interruptions in the continuity of molecular orientation. As described by the Trial Judge, he opined that “an interruption can occur if there is a significant amount of amorphous phase molecules interrupting the directional orientation of the crystalline phase molecules.” Dr. Choi opined that an interruption in continuous orientation could also occur where some of the lamellae (bundles of closely packed macromolecules that have formed into a pattern within the crystalline phase) are not oriented in the direction running around the crotch. The Trial Judge found Dr. Choi’s construction to be problematic for several reasons, including that it would be impossible to produce an infringing geogrid according to his construction, and that it was not the construction that would be reached by the POSITA with a mind willing to understand and reading the 858 Patent as a whole.

[23] However, the Trial Judge did retain Dr. Choi’s view that “continuous orientation” must account for both the degree of orientation and the direction of orientation. Citing passages from Dr. McGown’s testimony (including his acknowledgement that both the degree and direction of orientation were relevant to the meaning of “continuous orientation”), the Trial Judge concluded as follows:

[120] I find that the term “continuous orientation” means, at the very least, that (1) a predominant amount or substantial percentage of the molecules around the

crotch are oriented in a direction tangential to the curvature of the crotch, and (2) a predominant amount or substantial percentage of the molecules oriented around the crotch are in the crystalline phase.

[24] Turning to infringement, the disputed issues were likewise limited to the expression “whereby there is continuous orientation from the edge of one strand, around the crotch and to the edge of the adjacent strand,” and the construction given thereto. For the appellants, Dr. McGown relied on two reports. The first provided a three-dimensional analysis of the size and shape of the junctions of the respondent’s Tri-Grid products based on photographs thereof. The second provided (i) measurements of the thickness of various parts of samples of the respondent’s Tri-Grid products, and (ii) photographs thereof using a scanning electron microscope.

[25] The Trial Judge recognized that the second report relied on by Dr. McGown showed some thickness reduction in the crotch of the Tri-Grid sample tested, and therefore some amount of orientation in the crotch of the respondent’s products. However, the Trial Judge noted that both of the reports were limited to looking at the surface of the material, and neither could properly establish either the degree or the direction of the orientation of molecules in the crotch of the respondent’s products. In the absence of such evidence, the Trial Judge concluded that there was no infringement.

IV. Issues on Appeal

[26] The appellants define three issues on appeal:

Issue 1: Did the Trial Judge err in law by failing to construe the specific terms at issue in the 858 Patent in the context of the patent as a whole and in light of his

own definition of the POSITA and his findings on the common general knowledge as required by a purposive construction?

Issue 2: Has the Trial Judge erred in adding the limiting features of “predominant amount” or “substantial percentage” of the molecules around the crotch oriented in a direction tangential to the curvature of the crotch and oriented around the crotch in the crystalline phase?

Issue 3: If so, did the erroneous claim construction result in an unfair burden on the plaintiffs and the impossibility of proving infringement even though the 858 Patent was not being contested on the basis of utility, sufficiency of description or over-claiming?

[27] It is not entirely clear what distinction the appellants intend to draw between Issue 1 and Issue 2. On a careful reading of their submissions, it appears that Issue 1 is intended to assert that the Trial Judge contradicted himself, and thereby erred in law, by first rejecting the expert evidence of Dr. Choi construing the term “continuous orientation”, and then giving it some weight. Otherwise, Issue 1 seems to overlap with Issue 2.

V. Analysis

A. *Standard of Review*

[28] The standard of review applicable in the present appeal is as set out in *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235. The standard of correctness applies to questions of law (see para. 8), but findings of fact or of mixed fact and law, absent an extricable question of law, are reviewable only where the Federal Court has made a palpable and overriding error (see paras. 10 and 36).

[29] Construction of a patent is a question of law for the judge: *Tearlab Corporation v. I-MED Pharma Inc.*, 2019 FCA 179, 166 C.P.R. (4th) 367, at para. 28 (*Tearlab*). However, the appreciation of expert evidence as to how a skilled person would understand the language used in the claims, and what common general knowledge was available to such a skilled person at the date of publication, is a question of fact reviewable on a palpable and overriding error standard: *Tearlab* at para. 29.

[30] If the Trial Judge construed the claims properly, then subject to the presence of an extricable question of law, the question of infringement is a question of fact to be reviewed on the palpable and overriding error standard (*ABB Technology AG v. Hyundai Heavy Industries Co., Ltd.*, 2015 FCA 181, [2015] F.C.J. No. 973, at para. 30).

B. *Issue 1*

[31] I will consider the appellants' argument that the Trial Judge contradicted himself, and thereby erred in law, under this heading. I will consider all of the appellants' arguments concerning the construction of the term "continuous orientation" under Issue 2.

[32] I reject the appellants' argument on Issue 1 on the basis that I do not see any contradiction or inconsistency in the Trial Judge's consideration of the evidence. Firstly, the Trial Judge did not expressly reject all of Dr. Choi's evidence. Rather, the Trial Judge indicated several reasons why he found Dr. Choi's interpretation of the term "continuous orientation" to be problematic. I understand this part of his analysis to be a refusal to accept parts of Dr. Choi's opinion, but not all of it.

[33] The Trial Judge then considered Dr. McGown's evidence and found problems with it as well. Faced with a situation where he found both sides' evidence on claim construction to be problematic, he did what was open to him: he selected the aspects of the evidence that he favoured (in view of the overall record before him), and reached a conclusion on interpretation of the term "continuous orientation". I know of no authority, and the appellants have cited none, that would suggest that the Trial Judge was obliged to follow the entirety of the evidence of one side or the other, and could not reach his own conclusion.

[34] The key aspect of Dr. Choi's opinion that the Trial Judge adopted was the dual requirement that "continuous orientation" account for both the degree of orientation (the relative percentage of crystalline and amorphous phase molecules) and the direction of orientation (the direction in which the lamellae are oriented): see paragraph 115 of the Trial Judge's reasons. I do not see this as inconsistent with the concerns expressed by the Trial Judge about Dr. Choi's evidence.

[35] This is as far as the appellants' assertion of an error of law can go. Any deeper discussion by this Court of the Trial Judge's claim construction involves consideration of the evidence that was before the Court and how that evidence was weighed. This involves an issue of mixed fact and law, which is reviewable on a standard of palpable and overriding error. This is the subject of the next heading.

C. *Issue 2*

[36] This issue concerns the Trial Judge's construction of the term "continuous orientation", and is really the crux of the present appeal.

[37] The appellants argue that, in construing this term, the Trial Judge impermissibly read in words that are not present in the claims in issue, or in the patent specification, or in the common general knowledge. Specifically, the appellants point to the words "predominant amount or substantial percentage" in defining the extent of molecules around the crotch that are (i) oriented in a direction tangential to the curvature of the crotch, and (ii) in the crystalline phase.

[38] The appellants note that issues such as insufficiency of disclosure, lack of utility and overclaiming were not in issue before the Federal Court, and therefore the 858 Patent should be assumed to be sufficiently and fairly described and claimed. In that case, they argue, the POSITA should be able to make the invention without employing knowledge outside the scope of their expertise. Given the "limited knowledge of the molecular structure-property relationships of plastics" that the Trial Judge ascribed to the POSITA, the appellants argue that it was an error (i) to conclude that Dr. McGown's definition of "continuous orientation" was too broad, and (ii) to construe "continuous orientation" based on a predominant amount or substantial percentage of molecules having certain characteristics.

[39] I disagree with the appellants' argument that the Trial Judge's construction of "continuous orientation" read in words that are not present in the claims in issue. In my view, the

Trial Judge indicated clearly that his effort was to give meaning to the word “continuous” in the claims, which Dr. McGown’s opinion failed to do. As part of this effort, the Trial Judge accepted Dr. Choi’s view that “continuous” refers to the continuity of molecular orientation, and that an interruption of such continuity avoids the claims in issue. The Trial Judge also accepted Dr. Choi’s view that such continuity must relate to both the degree and the direction of orientation. In the absence of any wording in the 858 Patent itself that adequately defines the word “continuous” therein, it was open to the Trial Judge to rely on expert evidence to construe this word, and to favour Dr. Choi’s evidence over that of Dr. McGown. This is especially so considering Dr. McGown’s acknowledgement that “continuous orientation” requires orientation predominantly (or mainly) as defined in the claims in issue, and the parties’ agreement that the claims in issue require that the molecules align predominantly in a direction tangential to the curvature of the crotch.

[40] The appellants note that the parties agreed, and the Trial Judge accepted, that continuous means uninterrupted. The appellants argue that it was unnecessary to have reference to further expert evidence to interpret “uninterrupted”. I disagree. In my view, the appellants’ position boils down to a desire to have its expert’s interpretation prevail over that of the respondent’s expert. This Court will not interfere with the weighing of evidence absent a palpable and overriding error, which I do not see.

[41] The appellants also argue that there is an indication that the Trial Judge’s claim construction analysis went astray when he referred to the use of the term “continuous orientation” in a different patent (Mercer 631) to assist in construing that term in the 858 Patent:

see paragraphs 111 and 112 of the Trial Judge's reasons. However, I see no error in having reference to the common general knowledge (of which Mercer 631 is a part) to assist in determining the understanding that the POSITA would have of a claim term. I also disagree with the appellants' argument that the Trial Judge relied on Mercer 631 to justify his construction of "continuous orientation". That construction was justified rather by reference to other evidence, which is discussed in paragraph 39 above.

[42] I also find no error in construing the term "continuous orientation" based on the orientation of molecules, despite the limited knowledge of the POSITA concerning the molecular structure-property relationships of plastics. This approach was certainly open to the Trial Judge, particularly in view of the definition in the 858 Patent itself that ties "orientation" to the orientation of molecules. With such a definition, it is no surprise that the Trial Judge concluded that "continuous orientation" refers to the orientation of molecules. With such a definition, it must be that the POSITA, from whose point of view the patent is to be read and construed, had sufficient knowledge of the molecular structure-property relationships of plastics to put the invention into practice, including determining whether the orientation of molecules is continuous. As indicated at paragraph 18 above, the Trial Judge accepted that "basic features of polymers at the molecular level" were part of the POSITA's common general knowledge.

[43] I recognize that the disclosure of the 858 Patent focuses on thickness reduction that results from stretching. The appellants argue that this indicates that thickness reduction is an indication of molecular orientation, and continuous orientation around the crotch should be assessed based on thickness reduction. However, the fact is that the patentee chose to define its

exclusive right in terms of continuous orientation rather than thickness reduction. Though the patentee informed the POSITA that “orientation” means molecular orientation, it did not define “continuous”. It left it to the POSITA to determine what was meant by this word. In light of that, it was open to the Trial Judge to rely on Dr. Choi’s evidence to establish how the POSITA would interpret this word.

[44] The fact that issues like insufficiency, inutility and overclaiming were not in issue did not constrain the Trial Judge from construing the word “continuous” with reference to Dr. Choi’s evidence as to how the POSITA would understand it. There simply was not enough within the text of the 858 Patent to enable the construction of this word without considering the common general knowledge of the POSITA.

D. *Issue 3*

[45] This issue concerns whether the Trial Judge erred in assessing infringement. The wording of Issue 3, as phrased by the appellants, suggests that an error on infringement can be found only in the event that this Court agrees that the Trial Judge erred in his claim construction. The appellants’ memorandum of fact and law suggests the same. It was only at the end of their reply submissions at the hearing of the appeal that the appellants indicated their position that the evidence establishes infringement even if applying the Trial Judge’s construction of “continuous orientation”.

[46] I am not convinced that the Trial Judge erred in assessing infringement. The appellants argue that it is common ground that stretching of plastic causes orientation of molecules. The

appellants also argue that it goes without saying that direction of orientation goes hand-in-hand with degree of orientation. With regard to the first point, the Trial Judge's concern was that the appellants did not have direct evidence on the degree of orientation of molecules, and relied instead on evidence of thickness reduction. In my view, it was open to the Trial Judge to be concerned that the appellants' evidence on infringement was insufficient to establish that "a predominant amount or substantial percentage of the molecules around the crotch are oriented in a direction tangential to the curvature of the crotch."

[47] Regarding the appellants' argument that direction of orientation implicitly goes hand-in-hand with degree of orientation, I am not convinced that this establishes an error by the Trial Judge. I accept that this was Dr. McGown's view, but it was based on the idea that stretching orients molecules in the direction of the stretch. The Trial Judge was not obliged to extrapolate from this that stretching of the starting material for the respondent's Tri-Grid products would necessarily orient the molecules in the crotches of the junctions in the direction running around the crotch to the extent contemplated in the claims in issue.

[48] In the end, it may be that the respondent's Tri-Grid products use the general idea described in the 858 Patent. This may cause great frustration to the appellants, but it is not enough to establish patent infringement. Infringement focuses on the claims of the patent (not the description therein of the invention), and requires that the allegedly infringing product incorporate all of the essential elements of at least one of the claims. If the claims have a different focus than the disclosure, which is not uncommon, then there is room for the described invention to be used without infringing any of the claims of the patent. In addition, the burden to

establish infringement is on the patentee (the appellants here), and the evidence in this case did not satisfy the Trial Judge. That conclusion was open to him on this record.

VI. Conclusion

[49] For the reasons set out above, I would dismiss the present appeal. Based on the agreement of the parties, I would award costs to the respondent in the all-inclusive amount of \$12,500.

[50] Before concluding, I wish to thank the parties for their efforts in narrowly defining the issues in dispute. The appellants' decision to concentrate their appeal on the interpretation of one expression in the claims, and the respondent's decision to discontinue its cross-appeal, permitted this Court to focus its work efficiently, and to render a relatively short decision without undue delay.

"George R. Locke"

J.A.

"I agree.
Johanne Gauthier J.A."

"I agree.
Yves de Montigny J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-139-19

STYLE OF CAUSE: TENSAR TECHNOLOGIES,
LIMITED, TENSAR
CORPORATION LLC and
TENSAR INTERNATIONAL
CORPORATION v. ENVIRO-PRO
GEOSYNTHETICS, LTD.

PLACE OF HEARING: BY ONLINE VIDEO
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DE MONTIGNY J.A.

DATED: JANUARY 13, 2021

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