

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20250106**

**Docket: A-25-24**

**Citation: 2025 FCA 4**

**CORAM: LOCKE J.A.  
LEBLANC J.A.  
PAMEL J.A.**

**BETWEEN:**

**USINAGE PRO-24 INC.  
C/O/B AS NORDIK BLADES**

**Appellant**

**and**

**VALLEY BLADES LTD.**

**Respondent**

Heard at Montréal, Quebec, on December 10, 2024.

Judgment delivered at Ottawa, Ontario, on January 6, 2025.

**REASONS FOR JUDGMENT BY:**

**LOCKE J.A.**

**CONCURRED IN BY:**

**LEBLANC J.A.  
PAMEL J.A.**

**Federal Court of Appeal**



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**REASONS FOR JUDGMENT**

**LOCKE J.A.**

I. Overview

[1] Usinage Pro-24 Inc., carrying on business as Nordik Blades, appeals a decision of the Federal Court (2023 FC 1749, *per* Justice Martine St-Louis as she then was, hereinafter the Decision) that, among other things, found a number of claims of three of its patents invalid for

obviousness. Only two of those patents (Nos. 2,965,426 (the 426 Patent) and 2,992,233 (the 233 Patent)) remain in issue.

[2] Nordik Blades argues that the Federal Court erred in several respects in its analysis of obviousness.

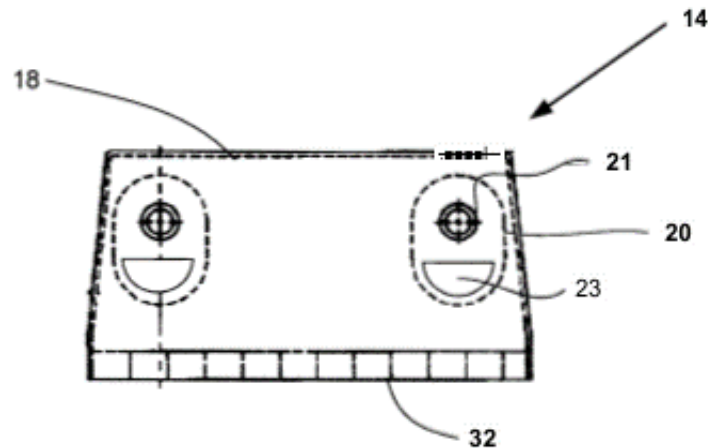
[3] For the reasons set out below, I am of the view that the appeal should be dismissed.

## II. The Patents in Suit and the Relevant Prior Art

[4] The three patents in issue before the Federal Court were No. 2,856,940 (the 940 Patent) and the two that remain in issue on appeal, the 426 Patent and the 233 Patent. All three patents are owned by Nordik Blades and have essentially the same disclosure. The 940 Patent was filed as a parent patent application and the other two were filed later as divisional applications. Accordingly, all three patents have the same effective filing date, priority date, publication date and expiration date.

[5] Each of the patents in issue has the same title: “Adjustable Sweeping Blade Device and Sweeping Blade Assembly”, and concerns a blade device and assembly to be attached to the bottom of a snow plow carried on a vehicle. The principal concern of the patents in issue is to reduce wear on the blades that contact the ground during snow plow operation by permitting vertical and angular movement thereof when they encounter uneven road surfaces. The reduction in wear is achieved by reducing vibrations caused by metal-to-metal contact of parts. Oblong

resilient bushings inserted into oblong holes in the blade and attached to the snow plow are employed to prevent such metal-to-metal contact. The most useful illustration of the patented blade device is at Figure 7 of the patents in suit reproduced here:



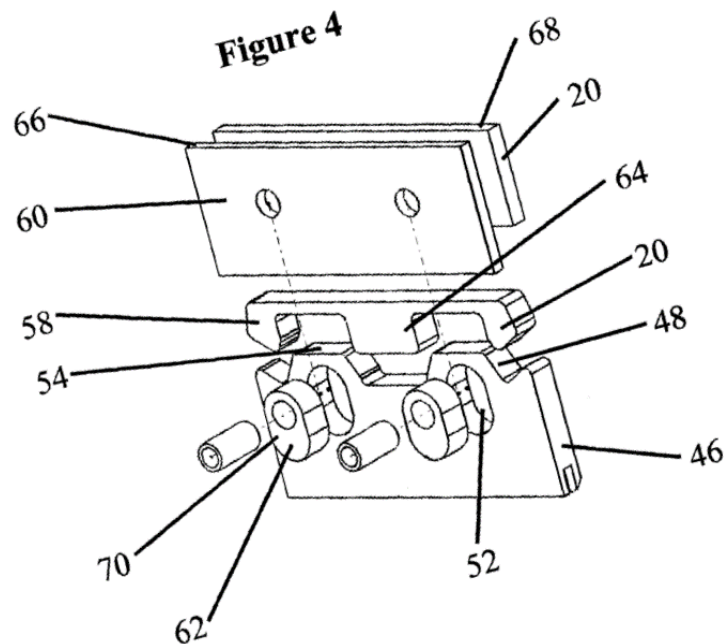
**Fig. 7**

[6] The strength of the resilient bushings (identified by numeral 20) to resist the forces involved during operation is improved by coating the blade in a resilient layer that is integrated with the bushings. When an irregularity on the road surface forces the blade upward, the portion of one or both of the resilient bushings below the metal bushing(s) 21 is compressed creating a downward (restorative) force on the blade. When the irregularity has passed, the restorative force returns the blade to its downward position.

[7] The claims that remain in issue are as follows: for the 426 Patent, independent claims 1, 20 and 50, and many claims dependent thereon, and for the 233 Patent, independent claim 1, and a number of claims dependent on it.

[8] The principal relevant prior art consists of Canadian Patent No. 2,717,986 (the PolarFlex Patent), U.S. Patent No. 5,746,017 (the Joma Patent), and products made according to these patents. The respondent, Valley Blades Ltd., owns the PolarFlex Patent and has commercialized a product as described therein (the PolarFlex Product).

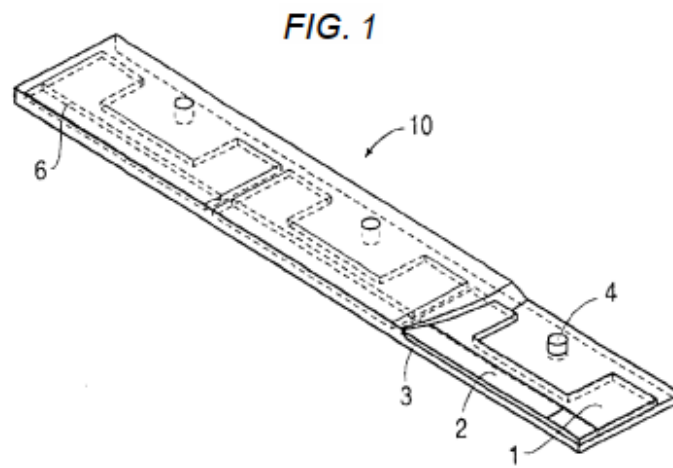
[9] The PolarFlex Patent describes a snow plow blade that, like the 426 and 233 Patents, reduces wear by eliminating metal-to-metal contact by using resilient parts. However, instead of resilient bushings integrated with a resilient blade coating, the PolarFlex Patent employs several separate parts to take the compressive force when something on the road surface forces the blade upward. These are upper flexible element 58, front flexible element 66, rear flexible element 68 and fastener flexible elements 62, as shown in Figure 4 of the PolarFlex Patent:



[10] With regard to the PolarFlex Product, the Federal Court noted at paragraph 149 of the Decision that most of these separate parts were actually fused together. I understand the fused

parts to be upper flexible element 58, front flexible element 66 and rear flexible element 68, but not fastener flexible elements 62, which are effectively the resilient bushings.

[11] The Joma Patent describes several snow plow blades (shown in Figure 1 thereof below as ploughshare 10) encased in an elastomeric mass 3 to permit independent movement of the individual blades or shares 6 to adjust for irregularities in the underlying surface. Each individual blade or share 6 comprises a share plate 1 and a cutting edge 2. Metal bushes 4 are inserted through the elastomeric mass 3. The spacing between the metal bushes 4 and the share plates 1 avoids metal-to-metal contact.



### III. The Federal Court's Decision

[12] The Decision addressed a number of allegations by Valley Blades of invalidity of various claims of the 940, 426 and 233 Patents that were raised in two separate proceedings tried together before the Federal Court. Valley Blades also made allegations against Nordik Blades under the *Trademarks Act*, R.S.C. 1985, c. T-13.

[13] The Federal Court dismissed all of Valley Blades' allegations except some related to obviousness. As indicated above, it is these allegations in respect of the 426 and 233 Patents that remain in dispute.

[14] The Federal Court heard testimony from experts put forward by each party: Harold Bouchard for Nordik Blades and Gino Paonessa for Valley Blades. Importantly, the Federal Court gave less weight to Mr. Bouchard's opinions because (i) his approach to finding the claims in dispute to be inventive was inconsistent with his approach in an earlier case in which he had provided an opinion, and (ii) he failed to acknowledge in his expert report his conclusion that one particular claim in dispute (claim 35 of the 426 Patent) was obvious (acknowledgement came only later in cross-examination). The Federal Court favoured the opinions of Mr. Paonessa, stating that he "came across as knowledgeable and honest", and explicitly accepting his opinions in several instances. It is also notable that Nordik Blades does not take issue with the limited weight given to Mr. Bouchard's opinions.

[15] The Federal Court began its discussion of obviousness with an explanation of the applicable legal principles, which are not in dispute here. This included a recognition that obviousness is assessed on a claim-by-claim basis, and citing the well-known four-part approach set out by the Supreme Court of Canada in *Apotex Inc. v. Sanofi-Synthelabo Canada Inc.*, 2008 SCC 61, [2008] 3 S.C.R. 265 (*Sanofi-Synthelabo*) at paragraph 67:

- (1) (a) Identify the notional "person skilled in the art";  
(b) Identify the relevant common general knowledge of that person;
- (2) Identify the inventive concept of the claim in question or if that cannot readily be done, construe it;

(3) Identify what, if any, differences exist between the matter cited as forming part of the “state of the art” and the inventive concept of the claim or the claim as construed;

(4) Viewed without any knowledge of the alleged invention as claimed, do those differences constitute steps which would have been obvious to the person skilled in the art or do they require any degree of invention? [Emphasis added.]

[16] The Federal Court also recognized that hindsight is prohibited when considering obviousness.

[17] The Federal Court then proceeded with its obviousness analysis, generally as directed by the Supreme Court, considering the following issues: (i) the person skilled in the art (the POSITA), (ii) the common general knowledge and the prior art, (iii) the inventive concept of the claims in issue, (iv) any differences between the inventive concept and the prior art, and (v) whether any such differences would have been obvious for the POSITA to bridge.

[18] The Federal Court noted that there was little dispute between the parties concerning the POSITA. The Federal Court also noted that the parties agreed that the Joma Patent, the PolarFlex Patent and the products associated therewith all formed part of the common general knowledge. Further, the Federal Court saw no dispute regarding the inventive concepts of the claims in dispute.

[19] The disagreements between the parties on obviousness arise at the stages of considering the differences between the inventive concept and the prior art, and whether any such differences would have been obvious for the POSITA to bridge. The Federal Court determined these issues for each independent claim in dispute and for the claims dependent thereon.



[20] In each case, the Federal Court found that any differences between the inventive concept and the prior art would have been obvious to bridge.

#### IV. Issues and Standard of Review

[21] Nordik Blades' arguments of errors by the Federal Court have been characterized in various ways in its memorandum of fact and law and orally. The Analysis section below of these reasons addresses Nordik Blades' key assertions.

[22] The parties agree, and I concur, that the standards of review applicable in this appeal are as contemplated in *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235: questions of law are reviewed on a standard of correctness, whereas findings of fact and questions of mixed fact and law, from which no question of law is extricable, are not reversed absent a palpable and overriding error.

#### V. Analysis

##### A. *The importance of the restorative force that returns the blade to its starting position*

[23] Nordik Blades notes that snow plow blades that are displaced upwardly and/or angularly because of contact with an uneven road surface must return to their starting position in order to function correctly. Nordik Blades argues that the nature of the restorative force that performs this function is central to the claimed invention and to the cited prior art, and the Federal Court erred in failing to consider this in its obviousness analysis.

[24] Nordik Blades notes the nature of the restorative force in the 426 and 233 Patents, which uses the integral connection of the resilient coating with the resilient bushings to permit the coating to assist with the restorative force of the bushings. Nordik Blades asserts that the prior art does not work this way. It argues that the PolarFlex Patent relies principally on the upper flexible element 58 (which is not contemplated in the 426 and 233 Patents) to provide adequate restorative force. It notes also that, even the PolarFlex Product, which integrates several flexible elements, does not integrate the resilient bushings (fastener flexible elements 62) with the other flexible elements. It argues that, accordingly, the restorative force of the PolarFlex Patent and the PolarFlex Product is not assisted by the surrounding integrated elements, as contemplated in the 426 and 233 Patents.

[25] Nordik Blades argues that restorative force in the Joma Patent is also different from the patented blade: it does not employ compression of oblong resilient bushings in oblong holes at all, and the coating (elastomeric mass 3) exists to prevent the individual blades or shares 6 from falling out. According to Nordik Blades, vertical movement in the Joma Patent is limited.

[26] I recognize the differences in how the blades of the 426 and 233 Patents, on the one hand, and the blades of the PolarFlex Patent and Product and the Joma Patent, on the other hand, are restored to their starting position. However, I do not agree that the nature of the restorative force is a feature of the 426 and 233 Patents of such importance that it was an error for the Federal Court to fail to discuss it in the Decision. Nordik Blades does not cite any expert evidence to this effect, and a review of the disclosure and claims of the 426 and 233 Patents does not suggest to me that the inventors considered it a central feature thereof.

[27] I am not convinced that the Federal Court erred in respect of the question of restorative force.

B. *Difference between claim 35 of the 426 Patent and other claims in issue*

[28] Nordik Blades argues that the Federal Court failed to appreciate the distinction between claim 35 of the 426 Patent (which the parties agree is obvious) and the other claims in issue. It notes that claim 35 does not define bushing holes “extending therethrough” or “defined therein”, as do the other claims.

[29] I am not convinced that the distinction was lost on the Federal Court, as Nordik Blades argues. The Federal Court clearly understood that claim 35 was different, in that its invalidity was not in dispute. The Federal Court was also careful to consider the distinct wording of each claim it assessed.

C. *How the Joma Patent works*

[30] Nordik Blades asserts that the Federal Court misunderstood how the device described in the Joma Patent works. Nordik Blades argues that the most glaring and consequential error in this regard is found at paragraph 118 of the Decision, where the Federal Court said that one of the key features of the Joma Patent was that “there is at least one bushing hole in each blade that is filled with rubber and is integrated with the outer rubber.” Nordik Blades notes that the individual blades or shares 6 of the Joma Patent are U-shaped, and the hole the Federal Court referred to (see numeral 4 in Figure 1 thereof reproduced at paragraph 11 above) is not in the

blade itself but rather in the elastomeric mass 3 (the resilient casing) near the blade. Nordik Blades argues that the Federal Court's misunderstanding is important because it concerns the central feature of restorative force.

[31] First, as indicated above, I do not consider the feature of restorative force to be as central to the invention of the 426 and 233 Patents as Nordik Blades argues.

[32] Second, while I agree with Nordik Blades that the bushing hole to which it refers is in fact not in the blade itself in the Joma Patent, I am not convinced that the Federal Court actually misunderstood how the device described in Joma Patent works. I consider the Federal Court's statement at paragraph 118 of the Decision to be a loose use of the word "blade", encompassing the coating around the blade. It appears that Nordik Blades' expert, Mr. Bouchard, used a similarly loose definition of this word when he concluded in his report on validity issues that the Joma Patent describes "a blade portion having at least one bushing hole" (see his discussion of obviousness of claim 35 of the 426 Patent at page 43 of his second expert report, tab 173 of the appeal book).

D. *What the POSITA would have done vs. could have done*

[33] Nordik Blades argues that the Federal Court erred in law by applying an incorrect test in its obviousness analysis. Specifically, the Federal Court cites paragraph 166 of the Decision, which relies on expert evidence concerning what the POSITA could have done, in reaching its conclusion that claim 50 of the 426 Patent is obvious. As Nordik Blades points out, the proper consideration is what the POSITA would have done: *Beloit Canada Ltée/Ltd. v. Valmet*

*OY* (1986), 8 C.P.R. (3d) 289 (F.C.A.), [1986] F.C.J. No 87, at 294; *Bridgeview Manufacturing Inc. v. 931409 Alberta Ltd. (Central Alberta Hay Centre)*, 2010 FCA 188, 87 C.P.R. (4th) 195 at para. 47 (*Bridgeview*).

[34] I am not convinced that the Federal Court erred in law. It clearly understood the proper test, having discussed what the POSITA would have done multiple times elsewhere in the Decision: see paragraphs 132, 149 and 157. I am not prepared to infer that the Federal Court applied a different test for claim 50 of the 426 Patent. In my view, the Federal Court's use of "could" in paragraph 166 was more likely a slip of the pen prompted by a witness's use of that word.

E. *Hindsight analysis and the presumption of validity*

[35] Nordik Blades also cites the aforementioned paragraph 166 of the Decision as one of several examples of impermissible hindsight analysis employed by the Federal Court in its obviousness analysis, which resulted in a failure to recognize the presumption of validity of patent claims.

[36] In my view, nothing in the Decision suggests that after observing at paragraph 106 that hindsight is prohibited, the Federal Court failed to follow that rule, or that it ignored the presumption that patent claims are valid. The specific points raised by Nordik Blades in this regard amount to no more than a disagreement with the Federal Court's conclusions as to what the POSITA would have been led to do in light of the prior art. This is a question of mixed fact

and law, with no extricable question of law, in respect of which this Court cannot intervene absent a palpable and overriding error. I see no such error.

[37] As a specific example, Nordik Blades argues that hindsight would be required to apply the PolarFlex Patent to obtain the patented invention because one feature thereof is easy replacement of worn parts, which becomes impossible if the device is covered in a resilient coating as contemplated in the 426 and 233 Patents. However, the question here is not whether combining the PolarFlex and Joma Patents to reach the patented invention would apply all the features of the PolarFlex Patent. Rather, the question is whether the POSITA would have combined these two patents to obtain the patented invention. It was up to the Federal Court to consider whether the feature of easy replacement of worn parts was of sufficient importance to the PolarFlex Patent as to have an effect on what the POSITA would do. I am not convinced that the Federal Court overlooked this point.

[38] I note also, as mentioned at paragraph 18 above, that the parties agree that both the PolarFlex Patent and the Joma Patent form part of the common general knowledge. This means that both references would already be in the mind of the POSITA; it is not necessary to consider how that person would have found them. If one or both of these references were not part of the common general knowledge, it would be more important to consider how the POSITA would have thought to combine them: see *Camso Inc. v. Soucy International Inc.*, 2019 FC 255, [2019] F.C.J. No. 261 at para. 125, citing *Eli Lilly and Company v. Apotex Inc.*, 2009 FC 991 at paras. 417-419.

[39] Nordik Blades characterizes some of its arguments against combining the PolarFlex and Joma Patents to come to the patented invention as secondary considerations. Specifically, Nordik Blades points to the feature of easy replacement of worn parts in the PolarFlex Patent as “teaching away” from the patented invention. It also points to Valley Blades’ copying of the patented invention as another secondary consideration. Nordik Blades also refers to several other secondary factors. It argues that it was an error of law for the Federal Court not to have discussed these issues.

[40] Whether or not these issues are properly characterized as secondary considerations, I do not agree that the Federal Court was obliged to comment on them. Secondary considerations may be useful in assessing obviousness, mainly in borderline cases (*Pollard Banknote Limited v. BABN Technologies Corp.*, 2016 FC 883, [2016] F.C.J. No. 848 at para. 221), but they are not conclusive evidence of inventiveness. They could not change a device that the Federal Court saw as obvious into an invention.

F. *Claims 6 and 8 of the 426 Patent*

[41] Nordik Blades notes correctly that the obviousness of an independent claim does not necessarily indicate that claims dependent thereon are likewise obvious. A dependent claim adds one or more limitations to those defined in the claims on which they depend, and such added limitation(s) may be sufficient to make the dependent claim inventive.

[42] Nordik Blades criticizes the Federal Court for failing to recognize the distinct nature of dependent claims and failing to conduct a distinct construction and obviousness analysis thereof,

including of claims 6 and 8 of the 426 Patent, which introduce the feature of ventilation holes in the bushings. These ventilation holes are shown as numeral 23 in Figure 7 of the 426 Patent reproduced at paragraph 5 above. These holes are used to increase the compressibility of the bushing, allowing for more absorption of vibration and vertical movement of the blade (see page 15, lines 5-6 of the 426 Patent).

[43] It is true that the Federal Court's treatment of dependent claims of the 426 and 233 Patents was brief; having found the independent claims obvious, the Federal Court concluded that the remaining features described in the dependent claims were obvious in light of the prior art, and that Nordik Blades had adduced no evidence to the contrary.

[44] However, the Federal Court did discuss specific features defined in the dependent claims, including the ventilation holes. The ventilation holes were discussed in the context of construction of claim 1 of the 940 Patent at paragraphs 90 and 91 of the Decision, and the Federal Court considered this feature in the context of the obviousness of the same claim at paragraphs 128 to 132. In light of that discussion, which relied on Valley Blades' expert, Mr. Paonessa, I see no need for the Federal Court to have repeated the analysis when considering claims 6 and 8 of the 426 Patent. Mr. Paonessa provided opinions concerning the obviousness of these claims, upon which the Federal Court was entitled to rely. The same is true for the other dependent claims in issue.



G. *Combination Patents*

[45] Nordik Blades argues that the Federal Court erred in its treatment of the argument that the patents in issue are combination patents and should be analysed in accordance with this Court's decision in *Bridgeview*, specifically paragraphs 51 and 52 thereof. In *Bridgeview*, this Court stated that “[i]t is not fair to a person claiming to have invented a combination invention to break the combination down into its parts and find that, because each part is well known, the combination is necessarily obvious.”

[46] At paragraph 126 of the Decision, the Federal Court responded to Nordik Blades' argument as follows:

... Combination patents are those that combine elements from multiple patented items; the inventivity is in the selection and combination of those elements. Nothing indicates that the Nordik Patents are combination patents or relate to a combination invention, that a combination was claimed, or that a combination was an essential element. The experts neither opined that the Nordik Patents related to a “combination invention” (*Bridgeview* at paras 51-52). I therefore do not consider the Nordik Patents as combination patents.

[47] I agree with Nordik Blades that the passage above betrays a misunderstanding of what constitutes a combination patent. Firstly, while it is true that combination patents combine elements, they need not be elements from patented items as indicated by the Federal Court. Any known elements will do, whether patented or not. Secondly, there is nothing unusual or rare about a combination patent as the Federal Court suggests. Most patents involve a combination of known features to achieve the claimed result. What distinguishes a combination patent is that it employs components in a manner that achieves a result that is more than a mere aggregation of those components. Simply stated, the components must combine somehow.

[48] However, despite the Federal Court's apparent misunderstanding of the nature of a combination patent, I am not convinced that the Federal Court failed to recognize the key point from *Bridgeview* – that one cannot conclude that an invention is obvious simply from the fact that all of the components thereof were known. The Federal Court clearly understood that the test for obviousness is not whether each component of a claim is known, but rather whether it would have been obvious to the POSITA to bridge any gap between the prior art and the claimed invention. The Federal Court's analysis, and the expert opinions on which it relied, demonstrate a proper understanding of the applicable legal test.

H. *Obviousness analysis by the Federal Court and Valley Blades' expert*

[49] Nordik Blades criticizes the adequacy of the Federal Court's explanation for concluding that it would have been obvious for the POSITA to arrive at the invention defined in the claims in dispute. Nordik Blades makes the same criticism of Valley Blades' expert, Mr. Paonessa.

[50] I see no reviewable error in the Federal Court's obviousness analysis. At paragraph 44 above, I have discussed how the Federal Court addressed claim 1 of the 940 Patent. It described how the parties and their respective experts disagreed, and it sided with Valley Blades. Because of the similarities of other claims in dispute to claim 1 of the 940 Patent, the Federal Court's analysis of such other claims was shorter, focusing on points not already discussed. That was a permissible approach.

[51] Mr. Paonessa's expert report addressed the issue of obviousness of Nordik Blades' patents in detail and followed the Supreme Court's guidance in *Sanofi-Synthelabo*. In my view, it was open to the Federal Court to rely on Mr. Paonessa's analysis.

VI. Conclusion

[52] Having considered Nordik Blades' arguments, and despite the able submissions of its counsel, I am not convinced that the Federal Court made any reviewable errors in concluding that the claims in dispute are obvious.

[53] I would dismiss the present appeal with costs in the all-inclusive amount of \$15,000.

"George R. Locke"

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J.A.

"I agree.  
René LeBlanc J.A."

"I agree.  
Peter G. Pamel J.A."

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-25-24

**STYLE OF CAUSE:** USINAGE PRO-24 INC. C/O/B AS  
NORDIK BLADES v. VALLEY  
BLADES LTD.

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**REASONS FOR JUDGMENT BY:** LOCKE J.A.

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PAMEL J.A.

**DATED:** JANUARY 6, 2025

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