
1935
May 30, 31,
Jun. 1.
Jul. 24.

BETWEEN:

THE CROSLEY RADIO CORPORATION ..... } PLAINTIFF;

AND

CANADIAN GENERAL ELECTRIC CO. LTD..... } DEFENDANT.

Patents—Infringement—Invalidity—Subject matter—General commercial adoption—Evidence of invention.

Plaintiff's patent No. 342,173 relates to refrigerators and claim 12, which is typical, claims:—

12. In a domestic refrigerator, a cabinet, a cooling unit located in the upper portion of said cabinet to set up a circulation of

refrigerated air therein, said cabinet having insulated walls about the door opening, a door for said cabinet having an insulated body hinged to the cabinet so as to abut the front of the cabinet when closed, and having a projecting portion extending into the cabinet when closed, the inner surface of the door being formed outwardly from the inner edge of the projecting portion so as to form a compartment surrounded by the projecting portion, said compartment located at least in part below the cooling unit so as to be available to the circulatory air in the cabinet, and shelves mounted on said door and lying at least in part within the cabinet.

Held: There is no subject matter in plaintiff's patent. It is merely a structural departure from the conventional form of a well known article and involves no invention.

2. That evidence of general commercial adoption of a certain device is not conclusive of invention.

ACTION by plaintiff to have it ordered and adjudged that defendant is infringing its patent, no. 342,173.

The action was tried before the Honourable Mr. Justice Maclean, President of the Court, at Ottawa.

O. M. Biggar, K.C., and *R. S. Smart, K.C.*, for plaintiff.

H. K. Thompson for defendant.

The facts are stated in the reasons for judgment.

THE PRESIDENT, now (July 24, 1935) delivered the following judgment:

This is an action for infringement of patent no. 342,173, granted to the plaintiff, the assignee of Constance Lane West. The specification describes generally the invention in the following words:—

This invention relates to a refrigerating unit, and has to do particularly with cabinet construction in combination with a cooling unit of a mechanical refrigerating system for providing additional food space maintained at a temperature different from the normal temperature in the main food compartment.

Heretofore in the fabrication of refrigeration boxes it has been customary to provide an inwardly tapering breaker strip for the box opening which co-operated with an inwardly tapering insulated portion of the door, usually called a pan. In some cases the breaker strip is formed around the pan portion of the door and in other cases is formed both around the opening of the box and around the pan. Regardless of the particular construction it is customary in the standard type of refrigerated box to define one surface of the cubical content capacity of the box by the inner face of the pan.

It is the object of the present invention to replace the standard door with the inwardly extending pan with a door wherein the thickness or insulating part thereof extends outwardly past the flange of the door and the inwardly extending or pan portion is annular in form so as to provide a hollow food space in line with or extending outwardly of the

1935

CROSLEY RADIO CORPORATION v. CANADIAN GENERAL ELECTRIC CO. LTD.

Maclean J.

usual breaker strip. One of the objects of this construction is the provision of approximately an extra cubic foot of food space without changing the dimensions of the standard refrigerator box. In other words, the slight bulge on the door will in no way change the space within the kitchen or other room within which the box is designed to fit, so that any standard refrigerator door can be replaced by the door embodying the present invention without any change in the position of the box. Another important feature is the location of the food space at a point relative to the cooling unit whereby the temperatures maintained in this extra food space will be at a higher range than the temperature existing in the refrigerator proper.

Other features of the invention will be brought out in the specification and claims.

The claims relied upon are the following:—

9. In a domestic refrigerator, a cooling unit in the upper portion of the cabinet for setting up a definite path of refrigerated air in a path at right angles to the door, a breaker strip around the cabinet opening, an auxiliary chamber within the door and in the general plane of the breaker strip, said auxiliary chamber being in front of the cooling unit and substantially the height of the door and so positioned as to set up a slower and auxiliary path of air circulation relative to said main path of air circulation.

10. In a domestic refrigerator, a cabinet, a cooling unit in the cabinet for setting up circulation of refrigerated air therein. said cabinet having insulated walls about the door opening therein, a door having an insulated body hinged to the cabinet so as to abut the front of the cabinet when closed, and having a projecting portion extending into the cabinet when the door is closed, the inner surface of the door being formed outwardly from the inner face of the projecting portion forming a compartment surrounded by the projecting portion, said compartment extending to a point where it opens unrestrictedly on the cooling unit, whereby circulation of refrigerated air is set up in the compartment, and shelves mounted on said door and lying at least in part within the compartment.

11. In a domestic refrigerator, a cabinet, a cooling unit in the cabinet for setting up circulation of refrigerated air therein, said cabinet having insulated walls about the door opening therein, a door having an insulated body hinged to the cabinet so as to abut the front of the cabinet when closed, and having a projecting portion extending into the cabinet when the door is closed, said projecting portion containing insulation, the inner surface of the door being formed outwardly from the inner face of the projecting portion forming a compartment surrounded by the projecting portion, said compartment extending to a point where it opens unrestrictedly on the cooling unit, whereby circulation of refrigerated air is set up in the compartment, and shelves mounted on said door and lying at least in part within the compartment.

12. In a domestic refrigerator, a cabinet, a cooling unit located in the upper portion of said cabinet to set up a circulation of refrigerated air therein, said cabinet having insulated walls about the door opening, a door for said cabinet having an insulated body hinged to the cabinet so as to abut the front of the cabinet when closed, and having a projecting portion extending into the cabinet when closed, the inner surface of the door being formed outwardly from the inner edge of the projecting portion so as to form a compartment surrounded by the projecting portion,

said compartment located at least in part below the cooling unit so as to be available to the circulatory air in the cabinet, and shelves mounted on said door and lying at least in part within the cabinet.

Figure 1 of the patent drawings is below reproduced.

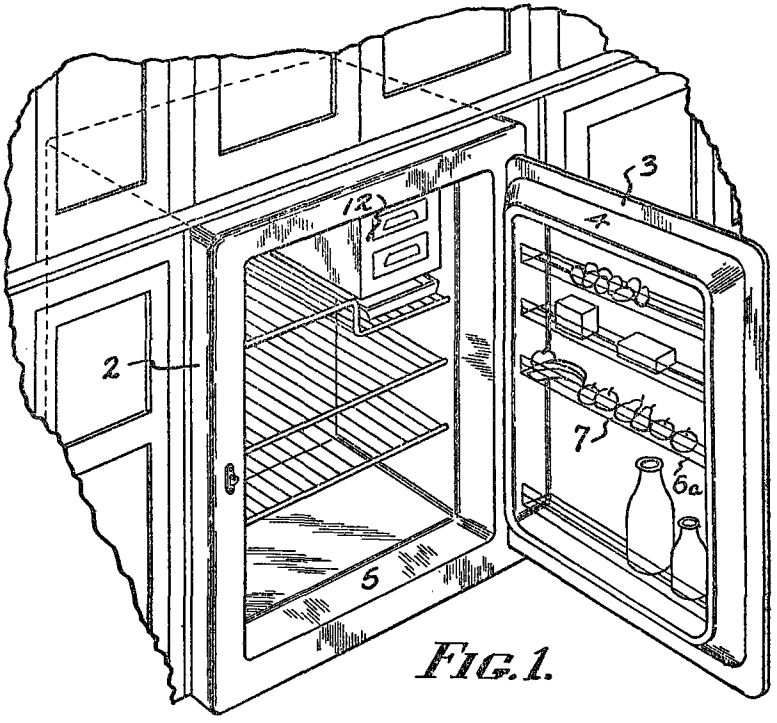

FIG. 1.

The vital characteristic of the alleged invention for which monopoly is here claimed may be fully gathered from the description quoted from the specification, the claims relied upon, and the drawing. If there is invention, it relates only to the recessed door as an element in a combination. There is no other feature of the plaintiff's refrigerator which distinguishes it from the standard mechanical refrigerators in use prior thereto and which had a flat vault-like door. Certain other features of this refrigerator were mentioned as contributing to subject matter but they are not, I think, of substance and I do not propose discussing them; in fact it did not appear to me that they were seriously pressed. There is but one substantial point for decision here, and that is whether or not there is invention in the idea of recessing the inner face of an insulated door in a domestic refrigerator so as

1935

CROSLEY RADIO CORPORATION v. CANADIAN GENERAL ELECTRIC CO. LTD.

Maclean J.

to provide a hollow food space therein with suitable shelving arrangements, and without materially adding to the exterior dimensions of the refrigerator.

The facts may be stated briefly. In June, 1930, Constance Lane West conceived the idea of recessing the inner wall of the doors of domestic refrigerators so as to provide additional refrigerated food space, with shelving, and it is claimed that this additional space would be particularly desirable and useful for the storage of small articles of food that are frequently required in any household. Her husband, a consulting engineer in the refrigerating art, soon made drawings of a refrigerator embodying this idea, much the same as the drawings in the patent. In due course a patent was applied for. Later Mr. West approached the plaintiff with a view of selling the invention to that company which were already manufacturers of refrigerators. It appears the plaintiff was at once impressed with Mrs. West's refrigerator door and it soon acquired the patent in suit, paying therefor quite a substantial sum, and very soon the plaintiff proceeded to manufacture and market refrigerators which embodied the alleged invention, under the trade name of "Shelvador." In 1933, the plaintiff sold 67,000 of Shelvador as compared with 14,000 of the standard type which they had been making, the flat door type, the year before; in 1934 there were sold 125,000 of Shelvador, and it was stated that the sales for 1935 were equally promising.

There is no doubt that the West door at once found favour with the buying public. I think it must be conceded that the West door structure possessed a new and useful feature not found in the standard domestic refrigerators at that time on the market. I do not mean to say that the utility in West could be described as great, because the utility claimed, even according to the plaintiff's evidence, lies in the fact that the space in the recessed door is useful for the storage of small articles of food, and that additional space is limited. Again if there be invention in West, I do not think anticipation is to be found in any of the prior art cited, nor do I think that there was any prior user of it. In commercial refrigerators, and in the early domestic refrigerating chambers of one kind or other,

shelving or receptacles may have been placed on the inside of doors, or what was the equivalent of doors, but I am inclined to think that they should not be held as anticipations of West when considering the modern domestic electrical refrigerator. I may also add here that if there is invention in West then, I think, it is absolutely clear that the defendant's structure infringes the plaintiff's patent.

The difficult question for decision here is whether there is invention in West. This case has given me considerable anxiety, but, with some hesitation, and notwithstanding the very able arguments of both Mr. Smart and Mr. Biggar in support of the patent, I have reached the conclusion that there is not subject matter in the patent in suit; there is not in it, in my opinion, the quantity or quality of the inventive faculty to support a monopoly.

Whatever may be said in support of invention here, it is entirely in the idea of having a recessed door containing a limited food space, instead of a flat door without that space. That is the essential feature of West. There was no problem in carrying out the idea. Invention may lie in an idea even if there is no invention in the way in which it is carried out. See Lord Moulton in *Hickton's Patent Syndicate* v. *Patents and Machine Improvements Co. Ltd.* (1). It is also correct, I think, to say that a scintilla of invention is sufficient to support a patent for a new and useful manufacture. It is immaterial from the point of view of the validity of a patent whether the invention is a great one, or a small one. Then, a thing may be new and useful, and commercially successful, but that cannot be regarded as conclusive of invention. A discovery may be new and useful but that does not necessarily establish that there has been any exercise of the inventive faculty. It has been often stated that while it is important to encourage inventions because of their possible influence upon trade and manufacture, yet it is equally important that manufacturers or traders, or the public generally, should not be hampered by the granting of patents where there has been no exercise of the inventive faculty at all.

(1) (1909) 26 R.P.C. 339.

1935

CROSLEY RADIO CORPORATION v. CANADIAN GENERAL ELECTRIC CO. LTD.

Maclean J.

Was it invention to conceive the idea of constructing an insulated refrigerator door, recessed on the inner wall, so that it would have some additional storage space? In deciding whether or not there is invention in West we have to decide a question of fact, and we can get little or no assistance in wandering into other cases to see what question of fact was there decided. The authorities give one little assistance, for they merely illustrate the difficulties which arise in almost every patent action. The line which separates things invented from things otherwise produced is not capable of being concisely defined and frequently it is very difficult to decide whether or not there is subject matter in a patent. Here, I am not convinced that it called for the exercise of the inventive faculty to conceive of West. However popular, or new and useful the West door is, it seems to me that it does not merit monopoly, and it would seem to be extending the right to a monopoly beyond reasonable limits to say that no one but Mrs. West, or her assignee, could construct a refrigerator door of the type described. A refrigeration chamber is space enclosed, made air-tight and insulated, and of course, provided with some refrigerant. The door refrigerating space in West is constructed substantially in the same way as the space in the body proper, and the chief difference is as to size, and particularly depth. In constructing a recessed door there is the application of practically the same idea as in the box of the body proper, that is to say, you build around the recess. It is conceded that there was no difficulty in constructing a door in this way so as to co-operate with the refrigerating space in the main portion of the cabinet. Mr. Money, one of the plaintiff's engineers, stated that apart from the recess and the racks the West door was substantially the same as the standard flat door, with "some difference round the edge but no substantial difference," to quote his own words. The flat door of the standard type of refrigerators lends itself readily to a limited recess like West, because of its normal thickness. I would hardly expect it to be suggested that there would be invention in hanging shelves on the inner wall of a flat door, either at the expense of diminishing the size of the box in the body of the cabinet, or by giving some additional total space by some special form of door

construction. Mr. Money stated that he had heard of some such suggestion a year and a half before he had heard of West, and I would be surprised if it had not been suggested many times. I find it difficult to believe that if one could conceive of the idea of placing shelves on the inner side of a flat door—and I do not see how any interested person could avoid doing so—that it would be an inventive step to recess the inner wall of the door and slightly bulge the outer wall, in order to get shelving space.

A favourite form of argument of counsel in supporting invention in a patent is to put the question: Why did not some one else suggest this before? Asking such a question does not necessarily carry one far in deciding whether or not there is invention in any particular case. If it were known that there were a well defined need and demand for a particular improvement, that the solution had long been sought, and that considerable experimental work had been done in that connection, the question would have some force. It is hardly profitable to speculate here as to why no one had earlier suggested, or sought to patent, the idea found in West. I am not at all convinced that there is occasion for surprise that the West door did not earlier come into use. One looks for structural improvements and alterations in comparatively new articles, such as mechanical refrigerators, only after considerable experience in the use of such things. And it was perhaps not unnatural that the suggestion of West first came, so far as we know, from a woman experienced in the use of such things, and not from her husband, an engineer engaged wholly in the refrigerator art for nearly ten years, and who, we are told, was very skeptical at first as to the utility of his wife's suggested refrigerator door.

After careful consideration I have arrived at the conclusion that there is no subject matter in West. It is, in my opinion, merely a structural departure from the conventional form of a well known article, and involved no invention. It lacks that "impalpable something," as one case puts it, which distinguishes things invented from things otherwise produced. The plaintiff's action is therefore dismissed with costs.

Judgment accordingly.