

1932
 April 29, 30.
 May 2.
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 May 27.

GILLETTE SAFETY RAZOR CO. OF CANADA, LIMITED	}	PLAINTIFF;
AND		
PAL BLADE CORPORATION, LIM- ITED AND METROPOLITAN STORES, LIMITED	}	DEFENDANTS.

Patents—Infringement—Anticipation—Factory Improvements

The invention claimed is for a blade to be used in safety razors, and it is claimed it is so perforated as to co-operate with the guard member of a handle to retain it in shaving relation thereto and that it also co-operates with the backing member so as to retain the latter in proper relation to the blade for shaving. It was held that the alleged invention was not new and did not denote invention.

2. It was held further that factory improvements, the little improvements and betterments in technique that skilled workmen devise, because they are skilled, should not be the subject of monopoly and do not constitute subject matter for a patent.

ACTION by the plaintiff to have a certain patent issued to one Caisman and assigned to it, declared valid and infringed by the defendants, and for damages and costs.

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

George F. Henderson, K.C., and *E. G. Gowling* for plaintiff.

O. M. Biggar, K.C., for defendants.

The facts of the case together with the parts of the specification and claims material to the understanding of the case are cited in the Reasons for Judgment.

THE PRESIDENT, now (May 27, 1932), delivered the following judgment.

This is an action for infringement of a patent issued in February, 1932, application for which was filed in June, 1924, by the patentee Henry J. Caisman. The action against the second named defendant was abandoned at the trial. The patentee in his specification states:—

My invention relates to safety razors and is particularly applicable to the class of safety razors comprising a guard, a backing and a thin flexible blade clamped between the guard and the backing to retain the cutting edge of the blade in shaving relation to the guard teeth. In the class of razors described it has been customary, so far as I am aware, to provide the backing member with pins that project through holes in the blade and into holes in the guard member, whereby the blade and the

backing are retained from rotation on the guard by the co-operation of said pins with the guard and the clamping of the blade between the guard member and the backing member, so that the blade performs no function in retaining any of said parts with relation one to another.

The object of my invention is to provide a safety razor wherein a blade will co-operate with a guard member to retain the blade in shaving relation thereto and the blade will also co-operate with a backing member to retain the latter in proper relation to the blade for shaving purposes, so that the position of the backing member with regard to the guard member is maintained by the blade and not by the co-operation of said members together in the well known manner I have described above. In carrying out my invention I provide a guard member and a blade having co-operative means to retain the blade in shaving position on the guard, a backing member for the blade, means co-operative between the blade and the backing member whereby the blade retains the backing member in operative relation to the blade and the guard, and means to cause the guard member and backing member to clamp the blade, therebetween.

These paragraphs of the specification describe the alleged invention here in issue about as clearly as it can be done. Mr. Gowling, for the plaintiff, rested the claim to invention upon the grounds that the blade will co-operate with the guard member to retain the blade in shaving relation thereto, that it will also co-operate with what the patentee calls the backing member to retain the latter in proper relation to the blade for shaving purposes, that the patentee had demonstrated after much experimental work that $\frac{1}{1000}$ -ths of an inch was the proper blade exposure, and that the blade lessened the variation of exposure by forty per cent. Mr. Gowling also urged that the object of the patentee was to leave the cap and guard members free to move in relation to each other independently until such time as the blade is positioned.

It is the first five claims of the patent that are said to be infringed and they are as follows:—

1. A blade having the means to co-operate with clamping members located on opposite sides of the blade to retain said members and blade in shaving relation.
2. A blade having means to position it on a clamping member, and having means to co-operate with another clamping member to retain the latter member in relation to the blade.
3. A blade provided with means to position itself on a clamping member, and having means independent of the first named means for positioning another clamping member on the blade.
4. A blade having a non-circular opening substantially centrally disposed to retain the blade in shaving relation to a guard member, said blade having means spaced from said opening to co-operate with a clamping member to retain the latter in shaving relation to the blade independent of the guard member.

1932
 GILLETTE
 SAFETY
 RAZOR Co.
 OF CANADA
 LTD.
 v.
 PAL BLADE
 CORP., LTD.
 AND
 METRO-
 POLITAN
 STORES,
 LTD.
 Maclean J.

1932

GILLETTE
SAFETY
RAZOR Co.
OF CANADA
LTD.

v.

PAL BLADE
CORP., LTD.
AND
METRO-
POLITAN
STORES,
LTD.

Maclean J.

5. A blade having an angularly shaped opening disposed substantially centrally in the blade to co-operate with a guard member to retain the blade in shaving position thereon, and said blade being provided with means spaced from said opening to co-operate with a backing member to retain the latter in shaving relation to the blade and to the guard member.

The issue is therefore limited to whether or not there is invention in the blade. The combination of the blade with the other parts of the razor is not before the Court, but it is impossible, I think, to discuss the former without reference to the latter, and while this may tend to confuse the issue, yet, I think, it is unavoidable.

In what is known as a safety razor there is, what was called during the trial, the cap member or outer member, and the inner or guard member which is provided with teeth on both sides,—the nearer member being convex and the other concave—and between them is positioned a thin, flexible and slotted blade, ground to a cutting edge on both sides; means of one kind or other are provided for holding them together. Ordinarily there is a screw pin which goes through both the cap and guard members and the blade, upon which the razor handle is screwed, and when the handle is tightly secured the blade is forced by the curved cap and guard members to assume a curved form and this causes the cutting edge to be drawn back relatively to the edges of the teeth of the guard member; in construction, allowance is made for this distortion of the blade. In what is called the old Gillette razor, the patent for which I understand has expired, there are three pins on the cap member the central one being a screw pin, and these three pins go through openings provided in the blade and then through the guard member, and when the handle is screwed on the central screw pin, the blade is clamped securely between these two members. In the patent described in the specification, there is a central screw pin on the cap member designed to go through the blade and guard member and whereon the razor handle is screwed. Instead of the two pins on the cap member and extending through the blade and guard member, as in the old Gillette, we have in this case two small projections stamped inwardly from the guard member, one on each side of the central screw pin, diamond in shape, which extend through diamond shaped openings in the blade and then into re-

cesses formed to receive the projections in the cap member, that is, when the blade is clamped between the cap and guard members. So really what has been done in this case is that instead of the two pins projecting from the cap member on either side of the central screw pin through the blade and guard member, as in the old Gillette, the patentee provides two pins or projections formed on the inside of the guard member which co-operate with appropriate openings in the blade, and with appropriate recesses in the cap member. So that structurally we find in the patent in question in a slightly modified form, everything found in the old Gillette razor.

Now, is there anything in the blade which denotes invention? The blade it is claimed, is retained in shaving relation in the cap member by shoulders placed at each corner on the inner face of the cap member, the four corners of the blade being notched to position the blade within the four shoulders, and thus the blade is said to co-operate with the cap member. But that feature of the blade, or the razor, was not new, it was old in the art. Ballreich (U.S.A. 1917) showed the same thing. To make a blade that fits within the four corner shoulders of the cap member is hardly invention. Then the blade is said to co-operate with the guard member because certain perforations in the blade will fit the two diamond shaped lugs or projections on the guard member; but these diamond shaped perforations co-operate with the same shaped projections on the guard member just as the perforations in the old Gillette blade co-operated with the two pins on each side of the central screw in the cap member. The fact that the projections are on the guard member instead of the cap member, or that the perforations in the blade are of a particular shape, is of no consequence. It may be said that the blade does co-operate with both members in the manner stated by the patentee, but it would be equally true to say that the two members co-operate with the blade, as they did in the old Gillette razor; in fact the blade is not operable until the cap and guard members, the blade, and the handle, are all in co-operation at the same time. I cannot think that there is invention in providing perforations in the blade to co-operate with the projections on the guard member, or in notching the blade so

1932

GILLETTE
SAFETY
RAZOR CO.
OF CANADA
LTD.
v.
PAL BLADE
CORP., LTD.
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POLITAN
STORES,
LTD.

Maclean J.

1932

GILLETTE
SAFETY
RAZOR Co.
OF CANADA
LTD.
v.
PAL BLADE
CORP., LTD.
AND
METRO-
POLITAN
STORES,
LTD.

Maclelan J.
—

that it will fit within the four shoulders on the cap member; there is not visible to me that degree of ingenuity which is necessary to constitute subject matter for a patent. I am unable to appreciate the contention that it is the blade alone that keeps the guard member and blade in shaving relation, or that the blade retains the cap member in operative relation to the blade and the guard; it plays its part in the co-operation of several elements, but the co-operation of other elements of the razor with the blade is equally necessary. The diminution of possible variations in blade exposure is not subject matter for a patent in my opinion, even if it is a fact; in any event I should doubt if that virtue is the consequence of the blade alone. Factory improvement, the little improvements and betterments in technique that skilled workmen devise, just because they are skilled, should not be the subject of monopoly and do not constitute subject matter for a patent. Notwithstanding the very ingenious presentment of the plaintiff's case, and the very ingenious specification of the patentee, I do not think there was invention in the razor blade in question at the rate of the plaintiff's Letters Patent.

Accordingly the plaintiff must fail in its action with the usual consequences as to costs.

Judgment accordingly.