

The Lawsuit

Bell Helicopter constructed and tested Eurocopter's patented sleigh-type helicopter landing gear during development of its own helicopter. Bell did not conduct prior art patent searches to help it assess freedom-to-operate. Eurocopter sued for patent infringement. Upon learning of Eurocopter's lawsuit, Bell rapidly modified the landing gear for its commercial gear so that it was non-infringing. The difference between infringing and non-infringing devices is subtle, but enough to make a difference from patent claims so that there was non-infringement.

Infringing prototype:



The court called it, "...nothing more than a simple copy of the patented Moustache landing gear" (par. 27)

Non-infringing production gear:



Bell asserted that it was unaware of the Eurocopter patent until sued, and provided evidence that no patent searches had been conducted. The trial court awarded Eurocopter compensatory damages for 21 infringing prototype landing gears that were never sold. The trial judge also found “clear evidence of bad faith and egregious conduct on the part of Bell” as well as “willful blindness or intentional and planned misappropriation of the claimed invention.” The court was not impressed by Bell’s lack of due diligence, stating, “It simply defies belief that a large and sophisticated corporation such as Bell Helicopter would not verify intellectual property rights prior to embarking on its research program.” For this reason, punitive damages were awarded, with the specific quantum to be determined.

Had Bell done patent searching and obtained a freedom-to-operate analysis, it could have revised its design before the prototype stage. Then none of its landing gear would have infringed valid claims. Bell would have defended against the patent infringement case across the board. Instead, the failure to take these basic precautions opened the door for a court to find that the invention was appropriated and wrongly used in prototypes, and to award compensatory and punitive damages. This shows the need to do IP due diligence early on in R&D.

¹ *Eurocopter v. Bell Helicopter Textron Canada Ltee.*, 2012 FC 113; aff’d 2013 FCA 219.