

Federal Court of Appeal



Cour d'appel fédérale

Date: 20260601

Docket: A-331-24

Citation: 2026 FCA 109

**CORAM: LOCKE J.A.
ROUSSEL J.A.
HECKMAN J.A.**

BETWEEN:

PROSLIDE TECHNOLOGY INC.

**Appellant
Respondent by Cross-Appeal**

and

WHITEWATER WEST INDUSTRIES, LTD.

**Respondent
Appellant by Cross-Appeal**

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on June 1, 2026.

REASONS FOR ORDER BY:

LOCKE J.A.

CONCURRED IN BY:

**ROUSSEL J.A.
HECKMAN J.A.**

Federal Court of Appeal



Cour d'appel fédérale

Date: 20260601

Docket: A-331-24

Citation: 2026 FCA 109

CORAM: LOCKE J.A.
ROUSSEL J.A.
HECKMAN J.A.

BETWEEN:

PROSLIDE TECHNOLOGY INC.

**Appellant
Respondent by Cross-Appeal**

and

WHITEWATER WEST INDUSTRIES, LTD.

**Respondent
Appellant by Cross-Appeal**

REASONS FOR ORDER

LOCKE J.A.

[1] This decision concerns costs in respect of an appeal by ProSlide Technology Inc. (ProSlide) and cross-appeal by WhiteWater West Industries, Ltd. (WhiteWater) to this Court from a decision of the Federal Court in an action alleging infringement of four of ProSlide's patents. The Federal Court (in 2024 FC 1439) concluded that none of ProSlide's asserted patent claims was infringed, and that several of them were invalid for various reasons. This Court's

decision (2026 FCA 59) allowed the appeal in part (restoring the validity of certain claims of three of the four patents in suit but maintaining the findings of non-infringement) and dismissed the cross-appeal. That decision also invited submissions on costs.

[2] The parties exchanged submissions in chief on costs and then, several days later, submissions responsive to the other side.

[3] WhiteWater argues that, despite the restoration of the validity of certain of ProSlide's patent claims, it was entirely successful in maintaining its defence against ProSlide's patent infringement allegations. It argues that it should be awarded costs in a lump sum for both ProSlide's appeal and its cross-appeal. It also argues that costs should be elevated (because the appeal had a very low chance of success) and that Rule 420 of the *Federal Courts Rules*, S.O.R./98-106 (the Rules), should apply to double costs from the date it made an offer to ProSlide to settle the appeal and cross-appeal, which offer was not accepted. As to quantum, WhiteWater seeks \$175,000, representing 47% of its actual legal costs.

[4] ProSlide argues for no award of costs because success was divided. It notes that it was partially successful on the appeal and entirely successful on the cross-appeal. ProSlide argues that Rule 420 should not apply in this case because the result that it obtained (restoration of the validity of claims of three of the four patents in suit) was more favourable to it than WhiteWater's offer of \$3,500. ProSlide also argues that the quantum of damages WhiteWater seeks is out of step with lump sum costs awards in this Court.

[5] Regarding Rule 420, I agree with ProSlide that it should not be applied in this case. While it is difficult to measure the value to ProSlide of having recovered the validity of several of its patent claims, including all of the claims of three of the patents in issue, I find it unlikely that it amounts to less than \$3,500. ProSlide pays hundreds of dollars every year to maintain each of the three patents in which claims were recovered. I would not expect ProSlide to do that unless the total value to it of those patents is more than \$3,500.

[6] I disagree with ProSlide's argument that success was divided. It is true that it managed to recover several patent claims and it was successful on the cross-appeal, but WhiteWater had the more important overarching victory of successfully defending itself against allegations of patent infringement. WhiteWater should be awarded costs. WhiteWater's unsuccessful cross-appeal was essentially to buttress its defence and would likely not have been commenced if not for ProSlide's appeal.

[7] Having said this, in recognition of WhiteWater's lack of success in its cross-appeal, I would award only a single set of costs on the appeal.

[8] As to the quantum of costs, I disagree with WhiteWater's argument that ProSlide's appeal had a very low chance of success. I would not award elevated costs.

[9] The hearing of the appeal was a full day in duration, with the cross-appeal accounting for another half-day of hearing time. I note that ProSlide, in its memorandum of fact and law on the appeal, proposed a lump sum award of costs in the amount of \$25,000 in relation to the appeal. I

find this amount reasonable and not out of line with what might have been awarded by following Tariff B of the Rules, recognizing that (i) Tariff B has recently been amended to have three columns instead of five, (ii) the unit value under Tariff B was recently raised to \$200, and (iii) this was a complicated case justifying costs higher than in accordance with column 2 as contemplated in Rule 407.

[10] I would award a lump sum of costs in the amount of \$25,000 to be paid by ProSlide to WhiteWater. As proposed by WhiteWater, without objection from ProSlide, I would award post-judgment interest at a rate of \$2.75%.

"George R. Locke"

J.A.

"I agree.

Sylvie E. Roussel J.A."

"I agree.

Gerald Heckman J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-331-24

STYLE OF CAUSE:

PROSLIDE TECHNOLOGY INC.
v. WHITEWATER WEST
INDUSTRIES, LTD.

DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY:

LOCKE J.A.

CONCURRED IN BY:

ROUSSEL J.A.
HECKMAN J.A.

DATED:

JUNE 1, 2026

WRITTEN REPRESENTATIONS BY:

François Guay
Daniel Davies
Matthew Burt
Irshaad Hashim

FOR THE APPELLANT/
RESPONDENT BY CROSS-
APPEAL

Andrew Skodyn
Sean Jackson
Eleanor Wilson
Carly Valentine

FOR THE RESPONDENT/
APPELLANT BY CROSS-
APPEAL

SOLICITORS OF RECORD:

Smart & Biggar LLP
Ottawa, Ontario

FOR THE APPELLANT/
RESPONDENT BY CROSS-
APPEAL

Cassels Brock & Blackwell LLP
Toronto, Ontario

FOR THE
RESPONDENT/APPELLANT BY
CROSS-APPEAL