

Federal Court



Cour fédérale

**Date: 20231207**

**Dockets: T-1147-23  
T-1148-23**

**Citation: 2023 FC 1649**

**Montréal, Quebec, December 7, 2023**

**PRESENT: Mr. Justice Sébastien Grammond**

**Docket: T-1147-23**

**BETWEEN:**

**SEISMOTECH IP HOLDINGS INC.  
SEISMOTECH SAFETY SYSTEMS INC.**

**Plaintiffs**

**and**

**JOHN DOES  
ECOBEE TECHNOLOGIES ULC**

**Defendants**

**and**

**APPLE INC.  
APPLE CANADA INC.**

**Non-Party Respondents**

**Docket: T-1148-23**

**AND BETWEEN:**

**SEISMOTECH IP HOLDINGS INC.  
SEISMOTECH SAFETY SYSTEMS INC.**

**Plaintiffs**

**and**

**JOHN DOES**

**Defendants**

**and**

**APPLE INC.  
APPLE CANADA INC.**

**Non-Party Respondents**

**ORDER AND REASONS**

[1] Seismotech wishes to sue consumers who bought, installed and used intelligent thermostats in their homes, because it alleges that these devices infringe certain patents it owns. To that end, it seeks a *Norwich* order to force Apple to disclose the names and addresses of consumers who downloaded the apps controlling such devices from the App Store.

[2] I am dismissing the motion. Seismotech has not shown that it has a *bona fide* claim. Moreover, the public interest does not favour the granting of a *Norwich* order. Given the inherent complexity of a patent infringement action and the nature of the technology at issue, individual consumers would be ill equipped to defend the action.

## I. Background

[3] The plaintiffs, which I will refer to as Seismotech, own four patents, broadly related to methods, apparatuses, media and signals for the management, monitoring, controlling or billing of public utility usage. They allege that several brands and models of intelligent thermostats infringe their patents.

[4] Seismotech brought four actions in this Court in respect of such infringement. The action in court file no T-1147-23 is a simplified action against a category of as of yet unidentified persons, described as “John Does,” who purchased intelligent thermostats made by Canadian manufacturers. The defendants include persons residing in either Canada or the United States. Seismotech claims damages and an accounting of profits from each individual defendant, the “profits” being the savings made by each defendant on their public utility bills by using the allegedly infringing technology.

[5] The action in court file no T-1148-23 is similar, except that it targets purchasers of intelligent thermostats made by foreign manufacturers. The defendants reside in Canada only.

[6] Seismotech also brought two “reverse class actions,” that is, actions against a category of defendants comprising legal persons who manufactured, distributed or sold allegedly infringing intelligent thermostats in Canada. One of these actions pertains to thermostats made by Canadian manufacturers and the other, those made by foreign manufacturers. In both cases, the proposed representatives of the defendant class are Rona Inc. and Home Depot of Canada Inc.

[7] One of the Canadian manufacturers of intelligent thermostats, Ecobee Technologies ULC [Ecobee], sought leave to be added as a defendant in action no T-1147-23. I granted Ecobee’s motion in October 2023: *Seismotech IP Holdings Inc v John Does*, 2023 FC 1335. Seismotech appealed my order, but no decision regarding the appeal has been rendered yet.

[8] When the motion to add Ecobee as a defendant was being heard, Seismotech amended its statements of claim to assert only certain independent patent claims, which it describes as “method claims.”

[9] Seismotech now brings motions to obtain a Norwich Order against Apple Inc. and Apple Canada Inc. [collectively, Apple] in each of files T-1147-23 and T-1148-23 [the “John Doe actions”]. Seismotech alleges that the operation of an intelligent thermostat requires end-users to download an app designed by the manufacturer from an online commerce platform such as Apple’s App Store. Apple possesses its customers’ personal information, including their names, e-mail addresses or Apple IDs, IP addresses, credit card billing addresses and the date they downloaded the app. Seismotech asks the Court to order Apple to provide this information with respect to users who have downloaded the apps designed to control the intelligent thermostats at issue in both John Doe actions.

## II. Analysis

### A. *Test for a Norwich Order*

[10] In simple terms, a *Norwich* order requires a person who is not a party to a proceeding to provide information to assist a plaintiff in bringing an action, typically, but not always, by revealing the identity of potential defendants. It owes its name to *Norwich Pharmacal Co v Customs and Excise Commissioners*, [1974] AC 133 (HL), which has become the landmark case on this issue in the common law world. It is rooted in equity and finds its origins in what is known as the equitable bill of discovery.

[11] In this Court, a plaintiff who seeks a *Norwich* order may rely on rule 238 of the *Federal Court Rules*, SOR/98-106, which provides for the examination on discovery of non-parties, or they may seek an equitable bill of discovery. In *BMG Canada Inc v John Doe*, 2005 FCA 193 at paragraph 30, [2005] 4 FCR 81 [*BMG*], the Federal Court of Appeal noted that the test would be the same in either case.

[12] Adopting language from *BMG*, the Supreme Court of Canada recently summarized the factors usually taken into consideration for granting a *Norwich* order in *Rogers Communications Inc v Voltage Pictures, LLC*, 2018 SCC 38 at paragraph 18, [2018] 2 SCR 643 [*Rogers*]:

- (a) [a *bona fide* claim] against the unknown alleged wrongdoer;
- (b) the person from whom discovery is sought must be in some way involved in the matter under dispute, he must be more than an innocent bystander;
- (c) the person from whom discovery is sought must be the only practical source of information available to the applicants;

(d) the person from whom discovery is sought must be reasonably compensated for his expenses arising out of compliance with the discovery order in addition to his legal costs;

(e) the public interests in favour of disclosure must outweigh the legitimate privacy concerns. [Emphasis omitted]

[13] Two elements of this test need to be further elucidated.

[14] First, to obtain a *Norwich* order, a plaintiff need not show that the claim is likely to succeed: *BMG*, at paragraphs 32–34; *1654776 Ontario Limited v Stewart*, 2013 ONCA 184 at paragraphs 49–50 [*Stewart*]. Some evidence is typically required to satisfy the Court that there is a legitimate basis for the proposed claim. However, plaintiffs are not required to negate potential defences at this stage, for example allegations of invalidity in patent cases: *Glaxo Wellcome PLC v Minister of National Revenue*, [1998] 4 FC 439 (CA) at 464 [*Glaxo*]. This relatively low threshold “is intended to ensure that actions for a bill of discovery are not brought frivolously or without any justification:” *Glaxo* at 461. The contrast between this threshold and the higher bar of a likelihood of success is often illustrated by the Latin expressions *bona fide* and *prima facie*.

[15] To suggest that no evidence is needed, Seismotech relies on a quote from *BMG*, at paragraph 34, where the Court states:

It is sufficient if [the plaintiffs] show a *bona fide* claim, i.e. that they really do intend to bring an action for infringement of copyright based upon the information they obtain, and that there is no other improper purpose for seeking the identity of these persons.

[16] This is a misreading of *BMG*. The Court denied a *Norwich* order in that case precisely because the evidence was lacking. In addition, Seismotech relied on a number of British cases, including *Stanford Asset Holdings Ltd v AfrAsia Bank Ltd*, [2023] UKPC 35 [*Stanford Asset Holdings*]. In that case, at paragraph 36, the Privy Council stated that a “good arguable case” was needed to issue a *Norwich* order. This shows that the mere assertion of a cause of action, without any factual foundation, is insufficient.

[17] The second issue pertains to the last criterion of the test. In *BMG* and *Rogers*, it is framed as a balance between the public interest in favour of disclosure and privacy concerns. This is because the main ground for opposing the motion in *BMG* was the privacy rights of Internet users. However, the fifth prong of the test is not limited to privacy concerns. As the Ontario Court of Appeal explained in *Stewart*, at paragraph 77:

The fifth *Norwich* factor is whether the interests of justice favour the obtaining of disclosure. This factor is broad and encompasses the interests of the applicant, the respondents, the alleged wrongdoers and the administration of justice.

[18] Indeed, this Court considers the interests of the alleged wrongdoers when it oversees the disclosure process and regulates the information that is provided to them: *Voltage Pictures LLC v John Doe*, 2014 FC 161, [2015] 2 FCR 540 [*Voltage 2014*]. The UK courts also appear to engage in a review of all the relevant circumstances, to determine whether the issuance of a *Norwich* order is “an appropriate and proportionate response”: *Stanford Asset Holdings*, at paragraph 36.

[19] Moreover, at this stage, the Court may take into account the apparent strength of the plaintiff’s case in the overall balance: *Stewart*, at paragraphs 59, 75 and 145.

[20] The breadth of the range of factors that may be considered is compatible with the principle that equitable remedies, such as a *Norwich* order, are discretionary in nature. This means that the Court is not bound by a rigid formula and can consider any relevant factor in deciding whether to issue the remedy. Discretion remains even where the power to grant relief has been codified in statute. See, for example, *Strickland v Canada (Attorney General)*, 2015 SCC 37 at paragraphs 37–38, [2015] 2 SCR 713; *Google Inc v Equustek Solutions Inc*, 2017 SCC 34 at paragraph 25, [2017] 1 SCR 824.

B. *Application to the Facts*

[21] Seismotech’s motion for a *Norwich* order fails for two reasons. First, it has not shown a *bona fide* claim. Second, it would not be in the public interest to allow the action to proceed in a manner that will effectively deprive defendants of access to justice and any meaningful manner of defending the action. In my view, each of these two grounds, standing alone, is sufficient to deny relief. It follows that I need not consider the other parts of the test for issuing a *Norwich* order. Neither do I need to address the jurisdictional issues flowing from Seismotech’s attempt to bring a lawsuit in Canada against consumers in the United States.

(1) Lack of a *Bona Fide* Claim

[22] In my view, Seismotech has not raised a *bona fide* claim, because its statement of claim fails to provide any detail of the alleged infringement of its patents and the evidence provided in this motion does little to fill this gap.



[23] The only allegations pertaining to infringement in each amended statement of claim are the following:

[TRANSLATION]

Each of the defendants employed methods, and in doing so reaped the benefits of the monopoly that was conferred upon the Plaintiffs through the Patents, by using the Products described in Schedule A which are manufactured and/or designed by the following companies located in Canada: [the manufacturers are listed]

The Defendants employed methods (below) by using the Products listed above and the methods employed by the Defendants contain all the elements of, and therefore infringe: [the asserted claims of the four patents are listed].

[24] In his affidavit in support of the present motions, Seismotech's owner, Mr. Baraty, does not provide any particulars of the allegations of infringement. He merely tries to link the alleged infringement to the use of the apps downloaded from the App Store. He states:

Based on my understanding of my Patents and the smart thermostat devices listed in Schedule A of the Statement of Claim, I believe that use of the mobile applications listed in Schedule A of the Notice of Motion are covered by the claims in the Patents. I also believe that the mobile applications would be used to operate features of those smart thermostat devices that would be covered by the claims in the Patents.

[25] In cross-examination, Mr. Baraty was asked to explain the basis for this belief. Counsel for Seismotech objected to the question, alleging that it was not relevant. I am of the view that the question was indeed relevant and that the refusal to answer gives rise to the adverse inference that there is no factual basis for this assertion beyond Mr. Baraty's subjective belief.

[26] Moreover, Mr. Baraty's affidavit attaches information downloaded from the Internet regarding the intelligent thermostat manufacturers listed in the statements of claim. This information shows that these manufacturers offer apps on Apple's App Store that, broadly speaking, allow users to control their heating systems remotely. Some of the advertisements contain promises of energy savings. There is no indication in the affidavit that Mr. Baraty, or anyone else on behalf of Seismotech, obtained or examined these devices or performed any analysis beyond a summary Internet search.

[27] I also note that Seismotech had been aware of Apple's contention that there is no *bona fide* claim for at least three months before the hearing of this motion. Its only reaction has been to amend the statement of claim to narrow the asserted claims to those that it describes as "method claims." It has not provided any additional basis for its allegations of infringement. Rather, it resisted attempts to obtain more clarity in this regard. This is simply not the behaviour of someone who has a *bona fide* claim.

[28] In my view, this evidence is wholly insufficient to establish a *bona fide* claim justifying the issuance of a *Norwich* order.

[29] A useful way of looking at the matter is to ask whether the statement of claim, together with Mr. Baraty's evidence, would withstand a motion to strike. The test for striking out a claim does not have the exact same purpose as the requirement for a *bona fide* claim in the test for a *Norwich* order. Nevertheless, it is difficult to contemplate the issuance of a *Norwich* order where the statement of claim is so deficient that it is liable to be struck.

[30] A claim will be struck “if it is plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action” or, in other words, if “the claim has no reasonable prospect of success”: *R v Imperial Tobacco Canada Ltd*, 2011 SCC 42 at paragraph 17, [2011] 3 SCR 45. According to rule 174 of the *Federal Courts Rules*, a statement of claim must contain “a concise statement of the material facts.” As the Federal Court of Appeal noted in *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at paragraph 17:

The proper pleading of a statement of claim is necessary for a defendant to prepare a statement of defence. Material facts frame the discovery process and allow counsel to advise their clients, to prepare their case and to map a trial strategy. Importantly, the pleadings establish the parameters of relevancy of evidence at discovery and trial.

[31] In actions for patent infringement, the statement of claim must allege “(a) facts by virtue of which the law recognizes a defined right as belonging to the plaintiff, and (b) facts that constitute an encroachment by the defendant on that defined right of the plaintiff”: *Dow Chemical Co v Kayson Plastics & Chemicals Ltd*, [1967] 1 ExCR 71 at 80–81 [*Dow Chemical*]. Here, the difficulty lies with the latter component.

[32] In *Mostar Directional Technologies Inc v Drill-Tech Corp*, 2017 FC 575 at paragraph 25, my colleague Justice Mandy Aylen stated that

A defendant is entitled to understand clearly and precisely the exact nature of the invention, as well as . . . the precise manner in which, according to the plaintiff, the defendant has infringed the claims of the patent . . .

[33] In that case, the plaintiff alleged that it was sufficient to identify the name or model number of the accused devices and to identify the patent claims that were allegedly infringed. At paragraph 33 of her decision, Justice Ayles found that this was entirely insufficient:

I reject the Plaintiff's assertion that the identification of the Defendants' model names and the enumeration of the claim numbers comprising the Asserted Claims are sufficient to enable the Defendants to know how they have allegedly infringed the Asserted Claims. In doing so, I note that the Plaintiff has failed to provide the Court with any case law that has recognized such a level of material facts as being sufficient to support a claim for patent infringement.

[34] The statement of claim in the present case suffers from the same defects. It merely names infringing devices and asserts, without any explanation, that these devices infringe certain patent claims, or that the use of these devices by the defendants infringes those claims. The defendants are left to guess how the claims are construed and which of the devices' components infringe them. The words of President Jetté of the Exchequer Court in *Dow Chemical*, at 75, are apposite:

If, however, the plaintiff has *no* ground for asserting that the defendant had done any particular act that, according to him, constituted an infringement of his rights, I should have thought that he has no basis for institution of proceedings for such an infringement. If the plaintiff does not know what the claim is, "he has no right to make a statement of claim at all". A bare assertion that the defendant has *infringed* the plaintiff's rights is not an allegation of facts constituting a cause of action and a statement of claim in which that is the only assertion of infringement could be struck out as being an abuse of the process of the Court.

[emphasis in original]

[35] Moreover, the evidence put forward in support of the motion does very little to remedy the deficiencies of the statement of claim. The only evidence concerning these devices consists

of Internet research performed by counsel and Mr. Baraty's unsupported belief. As previously mentioned, there is no indication that Seismotech obtained these devices, examined them or sought to understand how they work. Given the evidentiary record before me, I find the claim to be purely speculative. Hence, it can hardly be *bona fide*.

[36] It is useful to compare the evidence in this case to the evidence submitted in support of motions for *Norwich* orders in copyright infringement cases, such as *BMG, Voltage 2014* or *ME2 Productions, Inc v Doe*, 2019 FC 214. Typically, the plaintiff provides a forensic investigation report showing that a person using a certain IP address downloaded a file containing music or a movie, in which the plaintiff holds the copyright. In such a case, the report provides a plausible basis for assuming that there was a copyright infringement, as the very act of unlawfully downloading the copyrighted work is the infringing act. The investigator is able to report that the work downloaded by the user and the copyrighted work are the same. In contrast, the mere fact that consumers downloaded the apps in this case does not give any indication that the apps, the devices or their use by the consumers infringe Seismotech's patents.

[37] Seismotech seeks to distinguish these cases by saying that expert evidence is needed to tell the Internet service provider which IP addresses are involved in the illegal downloading of copyrighted works. Apple, in contrast, readily knows which App Store users have downloaded apps made by the intelligent thermostat manufacturers named in Seismotech's statement of claim. In my view, however, the evidence tendered in the copyright cases is not simply meant to identify the potential defendants. It also provides the Court with the assurance that the claim is

*bona fide*, in the sense that there is a plausible factual basis for the allegation of infringement. As explained above, this evidence is entirely lacking in this case.

[38] To summarize, Seismotech has not shown that it has a *bona fide* claim that the proposed defendants have infringed its patents. Its assertions of infringement are merely speculative. This is sufficient to dismiss Seismotech's motion for a *Norwich* order. If there is no *bona fide* claim to begin with, the issuance of a *Norwich* order cannot be justified by the other four factors mentioned in *BMG*.

[39] I would simply add that I reach this conclusion without any need to consider the defences that the defendants might raise, in particular with respect to the validity of Seismotech's patents.

(2) Public Interest

[40] The second reason why a *Norwich* order should not be issued is that this would be against public interest. This is the fifth component of the test for issuing a *Norwich* order. In *BMG*, this was framed as a balance between the public interests in favour of disclosure, on the one hand, and privacy concerns, on the other hand, possibly because privacy concerns were the main argument put forward in response to the motion in that case. Nevertheless, the range of factors that are relevant at this stage is not limited to privacy concerns. In *Stewart*, for example, the protection of journalistic sources was held to be a relevant consideration.

[41] It is useful to explain the public interest considerations that may favour the disclosure of information pursuant to a *Norwich* order. These considerations can be broadly linked to access to

justice. As the Ontario Court of Appeal wrote in *Stewart*, at paragraph 58, *Norwich* orders aim at “facilitat[ing] access to justice by victims of wrongdoers whose identity is not known.” More specifically, they favour the correct disposal of litigation by revealing the defendant’s identity or other information needed to establish the rights of the parties. Simply put, a *Norwich* order facilitates the search for the truth.

[42] This, however, works both ways. Access to justice is important not only for plaintiffs, but also for defendants. Civil litigation is an adversarial process. Truth is expected to emerge from the process because assertions made by one party are subject to challenge by the other. For this to happen, both parties must have a genuine opportunity to put their cases forward. There is a serious risk that a matter will not be correctly adjudicated if the defendant is deprived of access to justice or is ill equipped to assert available defences.

[43] Concerns for the defendants’ access to justice were front and centre when the Court set the terms of *Norwich* orders in cases where the defendants were individuals or consumers. For example, in *Voltage 2014*, this Court regulated the manner in which the plaintiff was to communicate with potential defendants.

[44] Special considerations arise when a party proposes bringing an action in patent infringement against a large number of individual consumers, each having a relatively modest amount at stake. Patent infringement cases are inherently complex. Patents are intended to be read by a person of skill in the art, not by persons who lack technical skills, such as judges and lawyers and, *a fortiori*, individual consumers. For this reason, prosecuting or defending an action

in patent infringement almost always requires the presence of expert witnesses. In a large proportion of such cases, the validity of the patent is challenged on a number of grounds, which reinforces the need for expert evidence. The quantification of damages also often raises complex issues. For all these reasons, patent litigation is costly. Costs awards made by this Court provide a glimpse of the magnitude of the financial resources needed to defend such an action, which are often measured in millions of dollars: see, for example, *Nova Chemicals Corporation v Dow Chemical Company*, 2017 FCA 25; *Apotex Inc v Shire LLC*, 2021 FCA 54; *Seedlings Life Science Ventures, LLC v Pfizer Canada ULC*, 2020 FC 505; *Bauer Hockey Ltd v Sport Maska Inc (CCM Hockey)*, 2020 FC 862.

[45] The nature of the technology at stake in this case compounds the difficulty of defending the claim. Very broadly, Seismotech's patents involve the use of information technology to provide sophisticated manners of controlling devices such as heaters, gas fireplaces and the like. End-users of intelligent thermostats cannot be expected to read the patents at issue and to construe their claims. Moreover, they do not have access to the inner workings of the device they own or the app they downloaded. Without the assistance of the manufacturer, it would require considerable effort and expertise to disassemble the device and its code to ascertain whether it infringes the claims of Seismotech's patents. This is unlike simpler mechanical inventions that a layperson may more easily understand: see, for example, *Fromfroid SA v 1048547 Ontario Inc*, 2023 FC 925.

[46] It is obvious that meaningfully defending Seismotech's action is entirely out of reach for the individual consumer. Even accepting Seismotech's theory that it is entitled to recover each



consumer's utility bill savings, the amount at stake for each defendant is unlikely to exceed a few thousand dollars. The Court is not aware of any realistic manner of providing individual consumers with adequate legal representation in the defence of such an action that would be proportionate to their own potential liability. Seismotech explicitly declined to attempt to certify this action as a reverse class action. Seismotech's suggestion that defendants could pool their resources to defend the action appears out of touch with reality, given the number of individual consumers involved and the amount at stake for each of them.

[47] Given the practical impossibility of defending the action, it is foreseeable that many defendants will feel compelled to accept an offer to settle regardless of the merits of the case. It is also foreseeable that many others will simply not respond and that Seismotech will bring a motion for default judgment against them. In this regard, Seismotech argues that the rules regarding default judgment provide sufficient safeguards and cites *Voltage Holdings, LLC v Doe #1*, 2023 FCA 194 as an example. It is true that on a motion for default judgment, the plaintiff must prove all the elements of its claim on a balance of probabilities. It is not the role of the Court, however, to raise defences that the absent defendant could have raised: *Trimble Solutions Corporation v Quantum Dynamics Inc*, 2021 FC 63 at paragraphs 35–37. Thus, the Court could conceivably grant default judgment without any discussion of the validity of the patents nor any challenge to the plaintiff's proposed construction of the claims or theory of infringement. I have great concerns that such a situation will not be conducive to a correct disposal of the matter. Moreover, a default judgment obtained under these conditions could be used to pressure other defendants into accepting a settlement.

[48] The complexity of mounting a defence sets this case apart from copyright infringement cases in which a *Norwich* order was issued to identify a large number of individual defendants. In those cases, there is rarely any debate about the plaintiff's copyright over the musical or cinematographic work that was copied or downloaded by the defendants. It appears that the defence is usually that the owner of the IP address is not the person who illegally copied the work. It stands to reason that the factual and legal complexity of such a defence bears no relationship to a patent infringement action.

[49] Seismotech also relied upon *Wobben Properties GmbH v Siemens Public Ltd Co*, [2014] EWHC 3173 (Pat), to argue that a *Norwich* order can properly be used to reveal the identity of the end-users of patented technology. It is obvious, however, that the proposed defendants in that case were large businesses that, one can assume, had the resources to defend a patent infringement action involving complex technology. If anything, this case shows that the character of the parties and the manner in which the proposed litigation is likely to unfold are relevant factors for deciding whether a *Norwich* order should be issued.

[50] In its reply submissions at the hearing of this motion, Seismotech suggested that manufacturers of intelligent thermostats would likely assist individual consumers in defending the action. This is doubly ironic, firstly because Seismotech structured its proceedings in a manner that does not afford the manufacturers any direct opportunity to defend the claim, and secondly because in response to Ecobee's motion to be joined as a party, Seismotech argued that manufacturers had no obligations toward end-users. It is disingenuous for Seismotech to suggest the manufacturers bankroll the individual consumers' access to justice, when it strenuously

opposed the intervention of one of them, Ecobee, and appealed my order adding Ecobee as a party.

[51] Thus, issuing the proposed *Norwich* order will give rise to a situation in which the proposed defendants will be denied meaningful access to justice. It is not in the public interest to grant a *Norwich* order in these circumstances.

[52] I have not found it necessary to factor the apparent strength of Seismotech's case into my assessment of the public interest. Having found earlier that Seismotech has not succeeded in satisfying the low threshold of a *bona fide* claim, this would only reinforce my conclusion that granting a *Norwich* order would run counter to public interest.

### III. Disposition

[53] For these reasons, Seismotech's motions for a *Norwich* order will be dismissed.

[54] Apple and Ecobee each claim their costs on an elevated basis. I agree with this request. This motion became particularly complex, largely because of the scope of Seismotech's submissions. Moreover, Apple is not a party to the proceeding and has no interest in the outcome of the action. For these reasons, I am awarding costs in the amount of \$8,000 to Apple and \$4,000 to Ecobee.

**ORDER in T-1147-23 and T-1148-23**

**THIS COURT ORDERS that**

1. The motion for a *Norwich* order in file T-1147-23 is dismissed.
2. The motion for a *Norwich* order in file T-1148-23 is dismissed.
3. The plaintiffs are condemned to pay costs in the amount of \$8,000, inclusive of disbursement and taxes, to the non-party respondents Apple Inc. and Apple Canada Inc.
4. The plaintiffs are condemned to pay costs in the amount of \$4,000, inclusive of disbursement and taxes, to the defendant Ecobee Technologies ULC.

"Sébastien Grammond"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKETS:** T-1147-23 AND T-1148-23

**DOCKET:** T-1147-23

**STYLE OF CAUSE:** SEISMOTECH IP HOLDINGS INC., SEISMOTECH SAFETY SYSTEMS INC. v JOHN DOES, ECOBEE TECHNOLOGIES ULC AND APPLE INC., APPLE CANADA INC.

**AND DOCKET:** T-1148-23

**STYLE OF CAUSE:** SEISMOTECH IP HOLDINGS INC., SEISMOTECH SAFETY SYSTEMS INC. v JOHN DOES AND APPLE INC., APPLE CANADA INC.

**PLACE OF HEARING:** HELD BY ZOOM VIDEO CONFERENCE

**DATE OF HEARING:** NOVEMBER 15, 2023

**ORDER AND REASONS:** GRAMMOND J.

**DATED:** DECEMBER 7, 2023

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