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United States Court of Appeals for the Federal Circuit

00-1248, -1334

SCHOLLE CORPORATION,

Plaintiff-Appellant,

v.

PACKAGING SYSTEMS, LLC,

Defendant-Cross Appellant.

DECIDED: JUNE 6, 2001

Before RADER, Circuit Judge, PLAGER, Senior Circuit Judge, and DYK, Circuit Judge.

DYK, Circuit Judge.

This case presents the issue of whether the district court properly interpreted the claims of U.S. Patent No. 4,120,134 (the "134 patent"). Scholle Corporation ("Scholle" or "plaintiff") appeals from the decision of the United States District Court for the Central District of California granting the motion of Packaging Systems, LLC ("Packaging Systems" or "defendant") for summary judgment of non-infringement of the '134 patent. Scholle Corp. v. Packaging Sys., LLC, No. CV98-7052 RSWL (C.D. Cal. Feb. 2, 2000). Packaging Systems cross-appeals the denial of its request for attorneys fees pursuant to 35 U.S.C. § 285. We hold

that the district erred in part in construing the patent and, as a consequence, erred in part in granting summary judgment of non-infringement. In light of this disposition, we affirm the district court's refusal to award attorneys' fees and costs. Accordingly, we affirm in part and vacate and remand in part.

BACKGROUND

I. '134 Patent

Scholle is the assignee of the '134 patent, which relates to an apparatus and method of filling flexible containers. The specification describes the typical flexible container as being a flexible plastic bag for juice, wine, or other fluids. The bag is placed in a paper box with a spout through which the liquid may be dispensed. '134 patent, abstract, col. 1, ll. 6-21. The end of the spout is equipped with a cap to maintain the liquid in the container and prevent contamination. Id. at col. 1, ll. 18-21. When filling the container, it is desirable to prevent an in-rush of air into the "head space" of the bag in the time period between filling the bag and capping the end of the spout. Id. at col. 1, ll. 28-32. The invention of the '134 patent aims to minimize the amount of air left in the head space of the bag, in order to reduce the possibility of contamination or oxidation of the contents.

The '134 patent contains thirty-three claims. Independent claims 15 and 33, the only claims at issue in this appeal, read as follows:

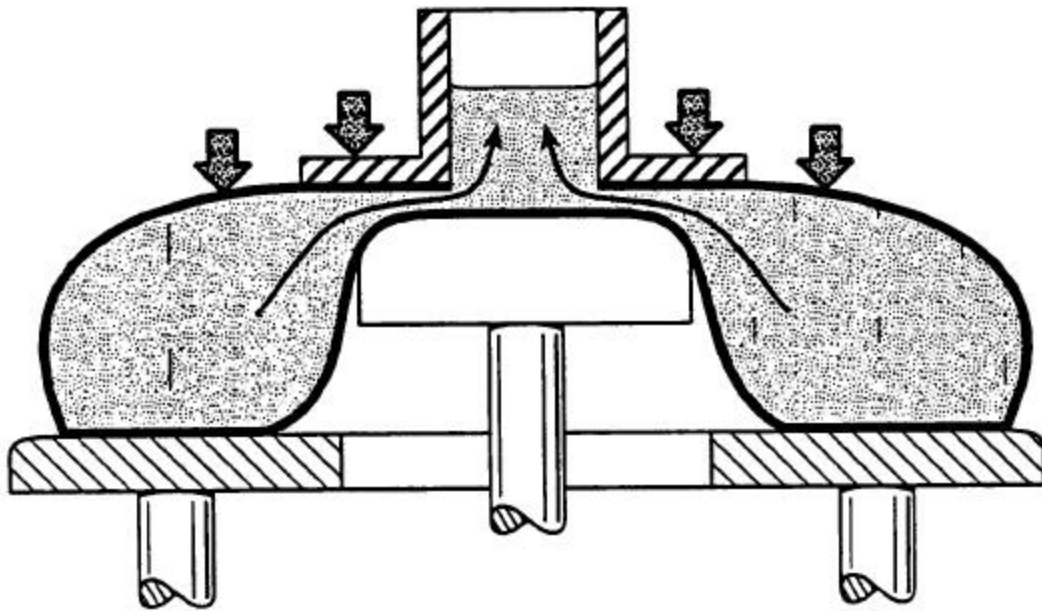
15. Apparatus for filling flexible containers having a filling aperture adapted to be closed by a separable cap, comprising container filling means engagable with the container aperture, a pressure plate for supporting the container under the filling means, said plate being movable toward and away from the filling means, and means operable upon completion of a filling cycle for moving said plate toward said filling means for causing an internal wall of the container to engage about and seal off said aperture thereby to exclude entry of foreign matter into the container until the aperture is closed by a cap.

33. A method of filling flexible collapsible bags having a filling spout thereon adapted to be closed by a cap, comprising the steps of inserting a filling nozzle into the spout and introducing contents into the bag to fill the bag, moving an internal wall of the bag into overlying relationship relative to the inner end of the spout to seal off the spout and exclude entry of foreign matter, and thereafter removing the filling nozzle from the spout and applying a cap to the outer end of the spout.

'134 patent, col. 13, ll. 29-39, col. 16, ll. 14-22 (emphasis added).

II. Proceedings Below

Scholle sued Packaging Systems for infringement of claims 15 and 33 of the '134 patent on August 28, 1998, alleging infringement by various filling machines made and/or sold by Packaging Systems. A schematic of one of the accused machines is shown below. In the machines, a footer positioned in the center of the machine seals off the flow of flow of any air into the flexible bag.



Scholle alleged infringement by filling machines manufactured and/or sold by Packaging Systems. While it is not entirely clear, the allegedly infringing machines apparently include numerous different machines including ones where: (1) the top of the footer has a raised cross-shape that contacts the bottom of the spout; (2) the top of the footer is flat and smooth, but remains one half inch below the bottom of the spout when the footer is in the raised position; (3) the top of the footer is flat and smooth, but is spaced a paper-thin distance below the spout when the footer is the raised position; or (4) the height of the footer may be adjusted by the customer in the field so that the bag contacts the spout. The record indicates that there may also have been machines with a smooth footer and direct contact between the bottom of the spout and the footer. Unfortunately, the record before us is unclear about the structure and quantity of each type of accused machine. Before the filing of the infringement complaint, the parties engaged in frequent correspondence and negotiation. Both Scholle and Packaging Systems asserted that various admissions were made by the other party.

In December 1999, Packaging Systems moved for summary judgment of non-infringement and submitted a proposed "Statement of Uncontroverted Facts and Conclusions of Law" to the district court. Packaging Systems asserted that the claims require an airtight bag-to-spout seal and that their filling machines do not create such a seal. Packaging Systems particularly emphasized that their devices allegedly minimize the air left in the head space of the bag by a completely different method than the airtight seal method of the claims, a method that they refer to as liquid displacement. Packaging Systems also performed tests on its filling machines that allegedly show that the footer does not create a seal. The district court judge construed the claims in an oral hearing on January 18, 2000. During the hearing, the district court judge stated: "After reviewing all such evidence, the court interprets the term 'seal,' used in claims 15 and 33, to mean 'airtight seal' and not 'substantial seal.'" (emphasis added). The district court judge then concluded:

Once the court has construed the claims of the patent, the court finds that the

plaintiff failed to introduce sufficient evidence to establish a triable issue of fact that defendant's filling machines create a seal and thus read upon the patent. Accordingly, the court grants defendant's summary judgment motion and therefore denies the plaintiff's summary judgment motion.

On February 2, 2000, the district court granted Packaging Systems's motion for summary judgment of non-infringement and denied Scholle's motion for summary judgment on the issue of claim construction. The district court reiterated that "Claims 15 and 33 of the '134 Patent require a bag-to-spout seal [after filling and before capping] as an essential element of any infringement claim."

On the issue of infringement, the district court found that the accused "filler machines [of Packaging Systems] do not create a bag-to-spout seal, and cannot be adjusted to make a bag-to-spout seal." The district court decision rested primarily on its view that the Packaging Systems machines use a different technique, the alleged liquid displacement method, for excluding air from the bag, than the '134 patent. The district court accordingly granted Packaging Systems's motion for summary judgment of non-infringement of claims 15 and 33.

On April 4, 2000, the district court issued an order denying Packaging Systems's motion for attorneys' fees and costs.

Scholle then appealed to this court, and Packaging Systems cross-appealed from the denial of attorneys' fees and costs.

DISCUSSION

I. Jurisdiction and Standard of Review

We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1295(a)(1) (1994). We review a district court's grant of a motion for summary judgment without deference. Ethicon Endo-Surgery, Inc. v. United States Surgical Corp., 149 F.3d 1309, 1315, 47 USPQ2d 1272, 1275 (Fed. Cir. 1998).

A patent infringement analysis requires two steps. Gentry Gallery, Inc. v. Berklene Corp., 134 F.3d 1473, 1476, 45 USPQ2d 1498, 1500 (Fed. Cir. 1998). "First, the claim must be properly construed to determine its scope and meaning. Second, the claim as properly construed must be compared to the accused device or process." Id. (quoting Carroll Touch, Inc. v. Electro Mech. Sys., Inc., 15 F.3d 1573, 1576, 27 USPQ2d 1836, 1839 (Fed. Cir. 1993)). Claim construction is a matter of law that is reviewed without deference. Cybor Corp. v. FAS Techs., Inc., 138 F.3d 1448, 1456, 46 USPQ2d 1169, 1174 (Fed. Cir. 1998) (en banc). Determination of infringement, whether literal or under the doctrine of equivalents, is a question of fact. Bai v. L&L Wings, Inc., 160 F.3d 1350, 1353, 48 USPQ2d 1674, 1676 (Fed. Cir. 1998).

II. Claim Construction

Claims 15 and 33 of the '134 patent present two issues of claim construction. Claim 15, an

apparatus claim, recites in pertinent part: "means operable upon completion of a filling cycle for moving said plate toward said filling machine for causing an internal wall of the container to engage about and seal off said aperture to exclude entry of foreign matter until the aperture is closed by a cap." '134 patent, col. 13, ll. 34-39 (emphasis added). Claim 33, a method claim, recites in pertinent part: "moving an internal wall of the bag into overlying relationship relative to the inner end of the spout to seal off the spout and exclude entry of foreign matter" Id. at col. 16, ll. 18-20 (emphasis added).

A. Physical Contact

The district court correctly held that the claims require a "bag-to-spout seal" during the time after filling and before capping. The claim language requires a sealing mechanism or method that creates a seal in which the bag contacts the spout. For example, claim 15 specifically states that the plate is moved toward the filling means, i.e., the spout, for causing an internal wall of the container, i.e., the bottom surface of the bag in the present case, to engage about and seal off the aperture, i.e., the spout. The recitation of "engage about and seal off said aperture" requires contact. Claim 33 requires the same, albeit in different terminology, reciting "moving an internal wall of the bag into overlying relationship relative to the inner end of the spout." Therefore, we conclude that the district court was correct in construing claims 15 and 33 to require physical contact between the inner wall of the flexible bag and the bottom of the spout when the filler is in the uppermost position. In the context of this case, this requires some physical contact between the inner wall of the flexible bag and the bottom of the spout.

B. Substantial Seal

The second issue of claim construction is that of the "airtight seal" requirement. The district court held that the patent required the seal to be "airtight," i.e., allowing only negligible amounts of air to enter the bag, and not a "substantial" seal as urged by Scholle. In this respect the district court erred. We find that the claims only require a "substantial" seal resulting from the physical contact.

In construing a claim, "the court should look first to the intrinsic evidence of record, i.e., the patent itself, including the claims, the specification and, if in evidence, the prosecution history." Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582, 39 USPQ2d 1573, 1576 (Fed. Cir. 1996). We begin with an analysis of the claim language itself. Id. "The general rule is, of course, that terms in the claim are to be given their ordinary and accustomed meaning." Johnson Worldwide Assocs., Inc. v. Zebco Corp., 175 F.3d 985, 989, 50 USPQ2d 1607, 1610 (Fed. Cir. 1999). "[I]t is always necessary to review the specification to determine whether the inventor used any terms in a manner inconsistent with their ordinary meaning." Vitronics, 90 F.3d at 1582; 39 USPQ2d at 1577. Finally, the court may consider the last piece of intrinsic evidence -- the prosecution history. Id. If however, a claim limitation is still not clear after examining the intrinsic evidence, we may look to extrinsic evidence to help resolve the lack of clarity. Interactive Gift Express, Inc. v. CompuServe, Inc., 231 F.3d 859, 866, 56 USPQ2d 1647, 1653 (Fed. Cir. 2000). Dictionaries, although a form of extrinsic evidence, may always be relied on by the court to determine the meaning of the claim terms "so long as the dictionary definition does not contradict any definition found in or ascertained by a reading of the patent documents." Vitronics, 90 F.3d at 1584 n.6, 39 USPQ2d at 1578 n.3; see also Interactive Gift Express, 231 F.3d at 866 n.1; 56 USPQ2d at 1653 n.1.

Packaging Systems argues that "[t]he plain language of both claims requires that the machine

create an airtight seal." We disagree. An airtight seal is only one of many possible seals. Resort to the dictionary does not provide a clear and unambiguous definition as to the type of seal that is required either. The dictionary has a number of definitions of seal, only one of which requires "a tight and perfect closure (as in the passage of air and water)." Webster's Third New International Dictionary 2046 (1968). Whatever the dictionary definition of seal is, here the definition of seal in the specification makes clear that only a "substantial" seal is required.

The specification of the '134 patent states: "Desirably, substantially all of any such atmosphere should be removed and excluded from the head space of the bag prior to recapping both to minimize the overall volume of the bag and, more importantly, to prevent oxidation and/or contamination of the product in the bag." '134 patent, col. 9, ll. 1-6 (emphasis added). Packaging Systems argues the above quoted phrase is directed toward the quantity of the air that is removed from the bag after the filling process, not the ability of the device to exclude air from the head space. This argument is unpersuasive. The term "substantially" as used in this passage from the specification, modifies both "removed" and "excluded," and thus the specification must be read to require only substantial exclusion or sealing of the spout.

"Substantial seal" should be defined by the industry standard for the quantity of air allowed into the head space of a bag in the flexible bag industry.

III. Infringement

As an initial matter, we want to make clear that the district court erroneously assumed that the accused machines cannot infringe if they use a different technique -- the liquid displacement method -- to exclude air from the head space of the bag, than used in the patented invention. Packaging Systems argues that its machines minimize the amount of air in the head space of the bag in an entirely different manner -- that their devices use a liquid displacement method. Whether or not this is true is irrelevant. It is well-established that the presence of additional elements or features in the accused device will not exclude a finding of infringement. SunTiger, Inc. v. Scientific Research Funding Group, 189 F.3d 1327, 1336, 51 USPQ2d 1811, 1816-17 (Fed. Cir. 1999); A.B. Dick Co. v. Burroughs Corp., 713 F.2d 700, 703, 218 USPQ 965, 967-68 (Fed. Cir. 1983), cert. denied, 464 U.S. 1042 (1984). If an accused machine contains every limitation of the patent claims -- here, physical contact and a substantial seal resulting from such contact -- the machine infringes, even if the device contains additional elements, so that it additionally achieves a sealing action by a different method.

A. Physical Contact

Turning to our comparison of the properly construed claims to the accused filling machines, it is likely that some of the accused machines satisfy the physical contact requirement and some do not. For example, the machines which leave a gap between the inner wall of the bag and the bottom of the spout do not meet the claim limitation requiring contact. But the other types of accused machines apparently do make contact between the bag and the bottom of the spout. However, it is impossible for us to distinguish between the infringing and non-infringing machines based on the existing record. This task should be undertaken in the first instance by the district court. On remand, the district court must determine whether any of the accused machines leave a gap between the inner wall of the bag and the bottom of the spout. Any such machines do not infringe the claims under the claim construction we have adopted, either literally or under the doctrine of equivalents.

B. Substantial Seal

As to the second disputed issue -- the requirement of a substantial seal -- the machines with physical contact between the bag and the spout may also meet the claim limitation requiring only a substantial seal. In any event, Packaging Systems has not shown on summary judgment that they do not. For example, Packaging Systems points to testing performed on the accused machines in which water was poured into the spout with the footers in a variety of positions. However, as pointed out by Scholle, these tests were apparently performed using empty bags. It is inconceivable how these tests could be relevant, particularly when the claims require the sealing to occur after the bags are filled with liquid. Scholle has presented sufficient evidence to raise a genuine issue of material fact as to whether the accused machines "substantially seal" the spout as required by the claims. Billington observed several of the accused machines in operation and stated that the inner wall of the bag contacted the bottom of the spout in the accused machines. Billington further observed that the quantity of air left in the bags were within industry requirements. This raises a genuine issue of material fact as to whether the accused machines create a substantial seal, at least with respect to machines of the type that Billington directly observed. Moreover, Packaging Systems has not presented any evidence showing a lack of a substantial seal in the accused machines.

CONCLUSION

We conclude that the district court's granting of summary judgment was not erroneous as to accused machines lacking physical contact between the bag and the spout. These machines cannot infringe under our new claim construction articulated above. However, because we conclude that a reasonable jury could have found infringement for the machines that directly press the bag against the bottom of the spout, we vacate in part the district court's grant of summary judgment of non-infringement and remand in part to the district court for further proceedings consistent with this opinion. The district court may of course entertain further motions of summary judgment at an appropriate time. If it does so, the district court should permit the parties to submit new affidavits and other evidence addressing the issue of infringement under our new claim construction.

In light of the disposition above, we affirm the district court's denial of the request for attorneys' fees and costs by Packaging Systems.

COSTS

No costs.

FOOTNOTES:

[1] According to the record and the parties, there are an undetermined number of machines that were sold to customers and subsequently modified by the customers so that the footer presses the inner wall of the bag against the spout. We do not opine as to whether this was done with or without the knowledge of Packaging Systems. These actions may raise issues of contributory infringement under 35 U.S.C. § 271(c) that were not addressed by the district court or the parties.

[2] We find the lack of civility in portions of the briefs of both parties to be unfortunate and inappropriate.