

NOTE: Pursuant to Fed. Cir. R. 47.6, this disposition is not citable as precedent. It is a public record. This disposition will appear in tables published periodically.

United States Court of Appeals for the Federal Circuit

02-1152

WILLIAM FREDERICK ROBINSON

Plaintiff-Appellant,

and

ROSA ROBINSON,

Plaintiff-Appellant,

and

WILLIAM HENRY ROBINSON II,

Plaintiff-Appellant,

v.

FAKESPACE LABS, INC.,

Defendant -Appellee.

DECIDED: March 5, 2003

Before NEWMAN, MICHEL, and BRYSON, Circuit Judges.

PER CURIAM.

Appellants William Frederick Robinson, Rosa Robinson, and William Henry Robinson appeal from a decision of the United States District Court for the Eastern District of Michigan ruling on summary judgment that Fakespace Labs, Inc., did

not infringe U.S. Patent No. 4,613,139 (“the ’139 patent”). We affirm.

I

The ’139 patent was issued to William Henry Robinson in 1986 and is directed to a pair of gloves adapted for use as a controller for a joystick control port of a video game or computer. Electrical contacts are affixed to some of the fingers and the thumb of each glove. The electrical contacts provide switch-closure control signals to a game console or computer. The patent contains one independent claim, which recites:

1. Apparatus for providing switch-closure control signal inputs to a joystick control port of a video console or the like, such control port being of predetermined configuration in which signal inputs consist of electrical closure between a common terminal at said port and one or more signal terminals, said apparatus comprising
 - a first glove having a thumb portion and four finger portions separate from each other and from said thumb portion,
 - a second glove having a thumb portion and at least one separate finger portion,
 - electrical contact means affixed to each of said thumb and finger portions of said first glove adjacent to the tips thereof and to said thumb portion and said one finger portion of said second glove adjacent to the tips thereof, such that physical contact between a thumb portion of one of said gloves and one or more of said finger portions of the corresponding glove obtains electrical connection between the corresponding contacts on said portions,
 - a connector constructed for removable mating engagement with a control port, said connector having common and signal terminals for individual mating engagement with common and signal terminals of a control port,
 - first connection means individually electrically connecting said contacts on said finger portions of said first gloves to signal terminals of said connector,
 - second connection means electrically connecting said contact on said thumb portion of said first glove to said common terminal at said connector, said second connection means including resistance means connected in series between said connector common terminal and said contact on said thumb portion,
 - third connection means electrically connecting said contact means on said finger portion of said second glove to a signal terminal on said connector, and
 - fourth connection means electrically connecting said contact on said thumb portion of said second glove to said resistance means such that said resistance means is connected in series between said connector common terminal and the contacts on the thumb portions of both said gloves.

’139 patent, col. 2, ll. 43-68, to col. 3, ll. 1-19.

Fakespace produces various hardware and software tools for virtual reality analysis and design. Among the company’s products is the Pinch Glove System, which is a system for interacting with three-dimensional data. Although it is not the subject of this appeal, the Pinch Glove System is a commercial embodiment of the invention claimed in U.S. Patent No. 6,128,004 (“the ’004 patent”), which was issued to Fakespace in 2000.

Believing that Fakespace’s Pinch Glove System infringed the ’139 patent, the Robinsons, proceeding pro se, filed suit in Michigan state court in 1999. Fakespace responded by filing suit in the United States District Court for the Northern District of California, seeking a declaratory judgment that the ’139 patent was invalid and not infringed by the Pinch Glove System. The Robinsons then filed a new infringement suit in the United States District Court for the Eastern District of Michigan. Both federal cases were eventually consolidated in the Eastern District of Michigan.

Fakespace moved for summary judgment of noninfringement, contending that its Pinch Glove System does not infringe the ’139 patent, either literally or under the doctrine of equivalents. The district court referred the motion to a magistrate judge, who recommended that the motion be granted. The district court subsequently adopted the magistrate’s recommendation, dismissed the case, and entered final judgment in favor of Fakespace. Because the district court adopted the magistrate’s recommendation as to all of the limitations pertinent to this appeal, we refer to the magistrate’s analysis and conclusions as the district court’s.

II

The district court construed claim 1 of the '139 patent to require the following features: (1) the two gloves must be connected to a single connector; (2) there must be electrical contacts on all the fingers and both thumbs; (3) wires must connect the finger contacts to the single connector; (4) wires must connect the thumbs to a common terminal on the connector; (5) the device must contain only a single resistor; and (6) the resistor must be in line between both two thumb contacts and the connector common terminal. It is not clear from the Robinsons' filings on appeal whether they challenge the district court's claim construction. In any event, we believe that this claim construction is correct.

Given that the Robinsons present a general challenge to the district court's noninfringement holding, we will assume that they dispute the court's conclusion that Fakespace's Pinch Glove System does not literally infringe the '139 patent. To prove literal infringement, the patentee must show that the accused device contains every limitation in the asserted claims. Riles v. Shell Exploration & Prod. Co., 298 F.3d 1302, 1308, 63 USPQ2d 1819, 1823 (Fed. Cir. 2002). Fakespace argues that its Pinch Glove System does not literally infringe the '139 patent because it lacks four of the claim limitations: (1) its finger leads do not connect to the terminal on a single connector; (2) its thumb leads do not connect to a common terminal; (3) its glove does not have a resistor; and (4) it does not have a resistor in a common lead connecting the thumb leads of each glove to a single connector. The district court held that each of those limitations is missing in the Pinch Glove System, and we agree. We therefore uphold the district court's ruling of no literal infringement.

The Robinsons contend that the Pinch Glove System infringes their patent right under the doctrine of equivalents. An element of an allegedly infringing product is equivalent to a claim limitation if the differences between the two are insubstantial to one of ordinary skill in the art. Warner-Jenkinson Co. v. Hilton Davis Chem. Co., 520 U.S. 17, 40, 41 USPQ2d 1865, 1875 (1997). The doctrine of equivalents is applied to each individual claim limitation, not to the invention as a whole. Id. at 29, 41 USPQ2d at 1871.

Under Federal Rule of Civil Procedure 56(c), summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Summary judgment must be entered against a party who bears the burden of proof at trial if that party fails to show the existence of a genuine issue of material fact on the subject of the motion. Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). The district court found that the Robinsons had presented no evidence of equivalency for any of the four missing limitations. Although the Robinsons argued to the district court, and reiterate here, that Fakespace's resistors are equivalent to the resistor recited in the patent, they made no showing at all in the district court with respect to the remaining three limitations: (1) the wires connecting the finger contacts to the single connector; (2) the wires connecting the thumbs to a common terminal on the connector; and (3) the resistor in line between both thumb contacts and the connector common terminal. Nor do the Robinsons present any argument as to equivalency for those three limitations on appeal; they focus exclusively on whether the Pinch Glove System contains an element equivalent to the resistor claimed in the '139 patent. Because failure to demonstrate equivalency for any single element in the accused device is enough to defeat an assertion of infringement under the doctrine of equivalents, Eagle Comtronics, Inc. v. Arrow Communication Labs., Inc., 305 F.3d 1303, 1315, 64 USPQ2d 1481, 1498 (Fed. Cir. 2002), we uphold the grant of summary judgment of noninfringement under the doctrine of equivalents without needing to address the resistor limitation.

We note that the district court based its conclusion in part on this court's en banc holding in Festo Corp. v. SMC, 234 F.3d 558, 56 USPQ2d 1865 (Fed. Cir. 2000), that the patentee surrenders all equivalents to an amended claim limitation by narrowing the claim for reasons related to patentability. As the Robinsons note, the Supreme Court reversed aspects of that decision. However, because our ruling is based on the Robinsons' failure to meet the minimum showing to preclude summary judgment rather than prosecution history estoppel, it is unnecessary to determine what effect the Supreme Court's decision in Festo would have on the doctrine of equivalents analysis.

III

The Robinsons challenge the district court's decision to stay discovery pending adjudication of Fakespace's motion for summary judgment. Because the question whether to stay discovery is not unique to our jurisdiction, we review that ruling under the law of the regional circuit. See Advanced Cardiovascular Sys. v. Medtronic, Inc., 265 F.3d 1294, 1308, 60 USPQ2d 1161, 1171 (Fed. Cir. 2001). The Sixth Circuit reviews discovery stay orders to determine whether the district court has abused its discretion based on a showing of substantial prejudice. Hahn v. Star Bank, 190 F.3d 708, 719 (6th Cir. 1999). In this case, we do not believe that the trial court abused its discretion in staying discovery. The Robinsons did not file a motion under Federal Rule of Civil Procedure 56(f) or otherwise indicate to the district court a need for additional discovery to present their opposition to Fakespace's motion. They served a discovery request on Fakespace on February 7, 2001, apparently after the trial court had already stayed discovery. The request sought various schematics and financial information related to the Pinch Glove System. At that time, however, the Robinsons were already in possession of schematics for the Pinch Glove System, an actual pair of the gloves, and a user manual for the gloves. Moreover, the financial data requested by

the Robinsons had no relevance to the dispositive legal issues in Fakespace's motion. Under similar circumstances, the Sixth Circuit has upheld a stay of discovery. See Hahn, 190 F.3d at 719-20.

IV

The Robinsons charge Fakespace with conspiracy, fraud, perjury, and unclean hands. These charges, however, appear to concern the validity of Fakespace's '004 patent, an issue that was not before the district court and is not at issue in this appeal. The Robinsons also allege that Fakespace designed around their patent. Even if true, however, that contention simply raises the question whether the accused infringer successfully designed around the patent or infringed the patentee's legal rights. Finally, the Robinsons assert that Fakespace's device is quite similar to their claimed invention, and therefore they should prevail in their infringement suit. However, there is a specific procedure to determine infringement, which involves construing the patent claims limitation by limitation and comparing each limitation to the corresponding element of the allegedly infringing device. One cannot prevail on a claim for patent infringement merely because the patented invention and the accused device share the same general concept. Even if this court were to agree that the Pinch Glove System embodies the heart of the Robinsons' patented invention, that determination alone would not support a finding of infringement. Because the district court did not commit error in granting Fakespace's motion for summary judgment, we affirm the judgment below.