

## MVS Filewrapper® Blog: New and Useful - February 6, 2013

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Related Categories: Subject matter jurisdiction, Obviousness, Federal Circuit cases, Claim construction, Patents

- In *Allergan, Inc. v. Barr Labs* the Federal Circuit affirmed a decision by the District of Delaware finding that Barr Laboratories, Inc. and Sandoz Inc. had infringed a patent owned by Allergan, Inc., and finding the patent-in-suit valid. Barr and Sandoz each filed abbreviated new drug applications (ANDA) for a generic version of the drug covered by the Allergan patent, and both ANDAs asserted that the Allergan patent was invalid or would not be infringed by the manufacture, use, or sale of the new drugs for which the applications were submitted. Allergan sued Barr and Sandoz for infringement, and the suits were consolidated for a bench trial on invalidity and infringement. The district court construed a single disputed claim and determined Allergan had defined the disputed term in such a way in the specification as to cover the Barr and Sandoz products. The district court also declined to adopt the defendants' arguments for invalidity based on obviousness. The defendants' obviousness case at trial relied on the testimony of an expert. However, the district court determined that the expert's testimony was undermined by his lack of credibility, as exposed on cross-examination. As a result, the district court declined to review the prior art references and weigh their import absent the guidance of an expert, and therefore concluded that Barr and Sandoz had failed to prove obviousness. The defendants appealed both the infringement and invalidity determinations, specifically asserting that the district court erred in not reviewing the prior art references and weighing their import notwithstanding the problems with the expert testimony.

On appeal, the Federal Circuit confirmed the

district court's claim construction and infringement determination. The Federal Circuit also confirmed the district court's determination with respect to the expert witness and the resulting conclusions regarding invalidity and obviousness. Specifically, the court held that the district court did not err in its decision because the case was sufficiently complex to require expert testimony in making the determination of obviousness, and "common sense and logic were not sufficiently illuminating in this case to carry Barr and Sandoz's burden of proving obviousness."

- In *Arkema Inc. v. Honeywell International, Inc.* the Federal Circuit reviewed a district court's denial of declaratory judgment jurisdiction for a case involving two suppliers of an automotive coolant. Arkema Inc. brought a declaratory judgment action seeking judicial determination that its plans to supply automotive coolant to car manufacturers would not infringe Honeywell's U.S. patents. This declaratory judgment action followed foreign litigation wherein Honeywell asserted European patents covering the same technology against Arkema. After the litigation commenced, Honeywell obtained two additional patents, and Arkema sought to amend its complaint to include declaratory judgment on these two additional patents. The district court denied Arkema's motion, concluding that there was insufficient case or controversy for the court to exercise declaratory judgment jurisdiction. The district court then certified for appeal its order denying Arkema's motion.

The Federal Circuit reversed the district court, addressing each of the district court's rationales for declining jurisdiction in turn. In particular, the Federal Circuit held that the district court's reliance on *Arris Grp., Inc. v. British Telecomm's PLC* was misplaced because while acts of direct infringement by a customer are sufficient to support DJ action by a supplier, they are not necessary. Further, the appellate court concluded that "[t]here is no requirement that Arkema identify the particular manufacturers that will purchase the [automotive coolant] or the particular automobile purchasers who will purchase the cars from the manufacturers, or the particular dates on which this will occur." The Federal Circuit instead concluded that the basis for Arkema's declaratory judgment jurisdiction was formed by the foreign litigation of the same technology along with contracts entered into by Arkema with customers for the supply of the

automotive coolant. The case was remanded for reconsideration.

- In *Accent Packaging, Inc. v. Leggett & Platt, Inc.* the Federal Circuit reversed a grant of summary judgment by the United States District Court for the Southern District of Texas for the alleged infringer, Leggett & Platt. The district court granted summary judgment of non-infringement based on its construction of the terms “each” and “a respective one” within the phrase “with each of the operator bodies being operably coupled with a respective one of said gripper, knotter, cutting element and cover.” The district court construed the terms to mean that there could only be a single function for a single “operator body,” and as a result the accused device could not infringe the claims because it used operator bodies with multiple functions. Accent appealed the grant of summary judgment, challenging the district court’s claim construction.

The Federal Circuit reversed the grant of summary judgment, concluding that the district court improperly construed the terms at issue. The appellate court, conducting its own de novo claim construction, determined that the narrow construction asserted by Accent was improper because it excluded the preferred embodiment disclosed in the specification. The court held that the preferred embodiment featured an elongated operator body that is operably coupled to one or more operator elements, and because “a claim interpretation that excludes a preferred embodiment from the scope of the claim is rarely, if ever, correct” (*On-Line Techs., Inc. v. Bodenseewerk Perkin-Elmer GmbH*, 386 F.3d 1133, 1138 (Fed. Cir. 2004)), the district court’s claim construction doing just that was erroneous. Based on the Federal Circuit’s own claim construction, it remanded the case and ordered the district court to grant summary judgment of infringement to Accent. A more in depth analysis of this case will be posted shortly.