Accent Packaging, Inc. v. Leggett & Platt, Inc.: Reminders on Claim Construction, Discovery Matters

Posted At : February 6, 2013 10:58 AM | Posted By : Blog Staff
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In ***Accent Packaging, Inc. v. Leggett & Platt, Inc.***, the Federal Circuit affirmed in part and reversed in part the district court's grant of summary judgment of non-infringement. Accent is the assignee of U.S. Patents 7,373,877 (the '877 patent) and 7,412,992 (the '992 patent). The patents are drawn to a wire tier device useful for baling and handling recyclables and solid waste to facilitate better handling. Accent sued Leggett for patent infringement and violation of the Missouri Trade Secret Act. Leggett filed a motion to dismiss the trade secret claim for failure to state a claim and the claim was dismissed. During discovery, Accent's expert inspected Leggett's allegedly infringing device. Leggett produced a redacted copy of its own patent application that Leggett argued covered its device, engineering drawings, marketing and promotional materials related to the device, and an operating manual for the device. Accent filed a motion seeking additional discovery, including: (1) information related to an alleged sale of Leggett's device.; (2) a deposition pursuant to FRCP 30(b)(6) to address infringement and claim construction; and (3) production of the redacted parts of the previously produced patent application. The district court denied the motion for additional discovery and both parties filed motions for summary judgment. The district court denied Accent's motion for summary judgment of infringement and granted Leggett's motion for summary judgment of non-infringement. Subsequently, Accent appealed to the Federal Circuit. The Federal Circuit opinion provides three reminders:

Reminder #1: Claim construction should allow the claim to cover the preferred embodiments

The '877 Patent

The district court granted summary judgment of non-infringement of the '877 patent largely based on its claim construction of the terms "each" and "a respective one." The court construed the terms to require four elongated operator bodies, with every operator body coupled only to one gripper, knotter, cutting element or cover. On appeal, Accent argued that the pertinent claim language did not require that each elongated operator

body be coupled to one and only one of those articulated elements. The Federal Circuit overruled the district court's claim construction of the terms "each" and "a respective one" stating the construction essentially excluded a preferred embodiment from the scope of the claims, as a preferred embodiment showed "two elongated operator bodies . . . operably coupled to both the knotter and the cover." In supporting this holding, the Federal Circuit quoted its previous holding in the 2004 case, *On-Line Technologies, Inc. v. Bodenseewerk Perkin-Elmer GmbH* stating, "We have held that 'a claim interpretation that excludes a preferred embodiment from the scope of the claim is rarely, if ever, correct.'" 386 F.3d 1133, 1138 (Fed. Cir. 2004).

The '992 Patent

Accent appealed the district court's claim construction of the term "of at least about ninety degrees." The asserted claims of the '992 patent require, "a mount for [the] cover permitting the cover to be pivoted away from said knotter to a knotter access position remote from said wire-maintaining position and through a pivot arc of at least about 90?." Accent argued that Leggett's device would pivot through the required ninety degrees if it weren't for its SafeLatch™ stop. The district court held that this was "a distinction without a difference, noting "[t]he SafeLatch™ stop is in fact part of the . . . device." Accent also argued that the device infringed the '992 patent because the SafeLatch™ stop can be easily removed, which permits the cover to pivot at least ninety degrees. The Federal Circuit found this argument unpersuasive, again citing its own precedent: "[A] device does not infringe simply because it is possible to alter it in a way that would satisfy all the limitations of a patent claim." *High Tech Med. Instrumentation v. New Image Indus., Inc.*, 49 F.3d 1551, 1555 (Fed. Cir. 1995). In light of this reasoning, the Federal Circuit affirmed the district court's summary judgment of non-infringement of the '992 patent.

Reminder #2: Plausibility in pleading also applies to discovery motions

As noted above, Accent's motion for additional discovery was denied by the district court. Accent appealed this ruling and the Federal Circuit affirmed the district court's ruling. The Federal Circuit stated that Accent's problem was "that it never 'set forth a plausible basis for believing that specified facts . . . probably exist.'" Slip op. at 10 (quoting *Raby v. Livingston*, 600 F.3d 552, 561 (5th Cir. 2010). The Federal Circuit found it important that Accent had received "extensive information" regarding Leggett's allegedly infringing device through production, and Accent's counsel and expert had thoroughly inspected the device. Despite all this evidence, "Accent failed to set

forth a plausible basis for believing that additional discovery" was necessary. Moreover, the evidence already present suggested the facts were opposite Accent's argument. Thus, the Federal Circuit affirmed the district court's denial of Accent's motion for additional discovery.

Reminder #3: Sufficient factual material to render plausibility is required for all claims

Accent appealed the district court's dismissal of the trade secret claim arguing that the court ruled on the motion before Accent even had a chance to respond in writing to the motion to dismiss. Accent's trade secret misappropriation claim was based on the argument that the specifications and tolerances of its commercial device constituted trade secrets. Accent argued that Leggett misappropriated those secrets by copying Accent's commercial device delivered to one of Accent's customers. However, the Federal Circuit found it important that Accent's own complaint acknowledged that its commercial device was sold in the regular stream of commerce. Thus, the device was not subject to reasonable efforts to maintain its secrecy. In affirming the district court's grant of summary judgment for Leggett, the Federal Circuit relied on *Twombly* and *Iqbal*, holding that the "complaint fails to state a claim to relief that is plausible on its face."