

PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C.

\_\_\_\_\_  
In the Matter of )  
 )  
CERTAIN ADJUSTABLE KEYBOARD ) Investigation No. 337-TA-670  
SUPPORT SYSTEMS AND )  
\_\_\_\_\_  
COMPONENTS THEREOF )

RECEIVED  
OFC OF THE SECRETARY  
US INTL TRADE COMM  
2009 NOV 16 PM 4:55

Order No. 24: Denying Respondents' Motion Nos. 670-16 And 670-17 For Summary Determination Regarding Invalidity Of All Asserted Claims Due To Anticipation And/Or Obviousness

On October 2, 2009, respondents CompX International, Inc. and Waterloo Furniture Components Ltd. d/b/a CompX Waterloo CompX moved for summary determination of invalidity on all asserted claims in this investigation due to anticipation and/or obviousness under 35 U.S.C. §§ 102 and 103. (Motion Docket Nos. 670-16 and 670-17.)<sup>1</sup>

The staff, in a consolidated response dated October 14, 2009, argued that Motion Nos. 670-16 and 670-17 should be denied in their entirety.

Complainant, in responses filed October 15, 2009, argued that Motion Nos. 670-16 and 670-17 should be denied.<sup>2</sup>

<sup>1</sup> Motion No. 670-16 is directed to anticipation under 35 U.S.C. §102(b) of asserted claims 6, 7, 11, 26, 34, and 37 of U.S. Patent No. 5,292,097 (the '097 patent) in issue by the Australian patent application AU-B-65578/90 ('578 Publication). Motion No. 670-17 is directed to anticipation under 35 U.S.C. §102 of claims 6, 7, 11 and 34 of the '097 patent by DE 3323780 ('780 patent), obviousness of claims 26 and 37 of the '097 patent in view of the '780 patent and U.S. Patent No. 4,372,612 (the '612 patent) and obviousness of claims 27 and 38 of the '097 patent in view of the '780 patent, the '612 patent and U.S. Patent No. 2,311,595 (the '595 patent).

<sup>2</sup> Complainant on October 15, 2009 moved for leave to file its opposition to Motion No. 670-16 late and represented that respondents and the staff have no opposition. (Motion Docket No. 670-23.) Said motion is granted.

On October 26, 2009, respondents moved for leave to file attached replies to complainant's oppositions to Motion Nos. 670-16 and 670-17 to correct "misstatements" of law and fact. (Motion Docket Nos. 670-27 and 670-28). It was represented that complainant opposed the filing of said motions and the staff reserved its position on said motions. On October 28, 2009, complainant in a filing opposed said motions. Motion Nos. 670-27 and 670-28 are granted.

Pursuant to to Commission rule 210.18, a summary determination "shall be rendered if pleadings and any 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 summary determination as a matter of law." See also Becton Dickinson and Co. v. C.R. Bard, Inc., 922 F.2d 792, 795 (Fed. Cir. 1990); Certain Power Supply Controllers and Products Containing Same, Inv. No. 337-TA-541, Order No. 10, Initial Determination Granting Complainant's Motion for Summary Determination Regarding Economic Prong of Domestic Industry (Public Version, December 30, 2005).

The evidence "must be viewed in the light most favorable to the party opposing the motion . . . with doubts resolved in favor of the nonmovant." Crown Operations Int'l, Ltd. v. Solutia, Inc., 289 F.3d 1367, 1375 (Fed. Cir. 2002) (internal citations omitted); see also Certain Condensors, Parts Thereof and Products Containing Same, Including Air Conditioners for Automobiles, Inv. No. 337-TA-334, Views of the Commission (Nov. 25, 1992). "Issues of fact are genuine only if the evidence is such that a reasonable [fact finder] could return a verdict for the nonmoving party." Id. (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)). In other words, summary determination is only appropriate if the judge is assured "that there is

no reasonable version of the facts, on the summary [determination] record, whereby the nonmoving party could prevail, recognizing that the purpose of summary [determination] is not to deprive a litigant of a fair hearing, but to avoid an unnecessary trial.” EMI Group N. Am., Inc. v. Intel Corp., 157 F.3d 887, 891 (Fed. Cir. 1998).

Summary determination is also improper where “the record contains facts which, if explored and developed, might lead the Commission to accept the position of the non-moving party.” Certain Optical Waveguide Fibers and Products Containing Same. Inv. No. 337-TA-401. Order No. 6 at 3 (July 28, 1998). Moreover, if an administrative law judge uses faulty legal analysis when applying law to the facts in a motion for summary determination, a reversal is required. See Certain Lens-Fitted Film Packages, Inv. No. 337-TA-406, Order No. 7 at 3 (July 10, 1998), citing Howes v. Medical Components, Inc., 744 F.2d 483, 487-88 (Fed. Cir. 1985); Certain Condensers, Parts Thereof and Products Containing Same, Including Air Conditioners for Automobiles, Inv. No. 337-TA-334, Views of the Commission at 3, 4 (Nov. 25, 1992). In Certain Condensers the Commission Opinion at 3 read:

In considering a motion for summary determination facts are to be viewed in the light most favorable to the nonmovant, Whittaker Corp. v. UNR Industries, Inc., 911 F.2d 709, 15 USPQ 2d 1742 (Fed. Cir. 1990), and all reasonable inferences are to be drawn in the nonmovant’s favor. United States v. Diebold, Inc., 369 U.S. 654, 655 (1962), Martin v. Barber, 755 F.2d 1564, 1566, 225 USPQ 233, 234 (Fed. Cir. 1985). Where inferences contrary to those drawn by the trier of fact might be permissible, a genuine issue as to the ultimate fact is raised and summary judgment is improper. United States v. Diebold, at 655. In addition, faulty legal analysis in applying the law to the facts on motion for summary determination requires reversal. Howes v. Medical Components, Inc. 814 F.2d 638, 2 USPQ2d 1271, 1273 (Fed. Cir. 1987).

(emphasis added)

Referring to anticipation, a presumption of validity applies to the asserted patents, and the respondents have the burden of overcoming that presumption and proving invalidity by clear and convincing evidence. Checkpoint Sys., Inc. v. United States Int'l Trade Comm'n, 54 F.3d 756, 761 (Fed. Cir. 1995). The patent statute dictates that a person is not entitled to a patent if:

the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States...

35 U.S.C. § 102(b). “In order to prove that a claim is anticipated . . ., [Respondents] must present clear and convincing evidence that a single prior art reference discloses, either expressly or inherently, each limitation of the claim.” In re Cruciferous Sprout Litigation, 301 F.3d 1343, 1349 (Fed. Cir. 2002); see also C.R. Bard v. M3 Sys., 157 F.3d 1340, 1349 (Fed. Cir. 1998). To be considered anticipatory, the prior art reference must be enabling and must describe the applicant’s claimed invention sufficiently to have placed it in the possession of a person of ordinary skill in the field of invention. See Helifix Ltd. v. Blok-Lok, Ltd., 208 F.3d 1339, 1346 (Fed. Cir. 2000). Anticipation is a two-step inquiry: the first step is the proper construction of the claims, and the second step is the comparison of the properly construed claims to the prior art. See, e.g., Medichem, S.A. v. Rolabo, S.L., 353 F.3d 928, 933 (Fed. Cir. 2003).

As for obviousness, a claimed invention is unpatentable if the differences between it and the prior art “are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art.” 35 U.S.C. § 103. Not unlike a determination of infringement, “a determination of anticipation, as well as obviousness, involves two steps. First is construing the claim, a question of law for the court, followed by, in the case

of anticipation or obviousness, a comparison of the construed claim to the prior art.” Key Pharmaceuticals v. Hercon Laboratories Corp., 161 F.3d 709, 714 (Fed. Cir. 1998). Underlying factual inquiries include: (1) the scope and content of the prior art, (2) the level of ordinary skill

At issue in the investigation, inter alia, are the construction of the terms “first element,” “second element,” “a pair of linkage elements,” and “first and second locking member that have engagement faces.” (See Motion 670-016, Stmt. of Undisputed Facts at ¶35.) The Federal Circuit has stated that a “court may not invalidate the claims of a patent without construing the disputed limitations of the claims and applying them to the allegedly invalidating act.” Dana Corp. v. American Axle & Mfg., Inc., 279 F.3d 1372, 1376 (Fed. Cir. 2002). No claim construction has been issued in this Investigation, and the parties’ experts disagree as to the appropriate construction of at least some of these claim terms. (See Comp. Resp. To Stmt. Of Undisputed Facts at ¶¶16-17; Staff Resp. To Stmt. Of Undisputed Facts at ¶¶10-11, 16.) in the art.

Moreover in this investigation, it appears that a determination has to be made as to whether the asserted claims contain means-plus- function limitations under 35 U.S.C. § 112 ¶ 6. The question of whether claim language includes a means-plus-function limitation is a question of law. TriMed, inc. v. Stryker Corp., 514 F.3d 1256, 1259 (Fed. Cir. 2008). A claim element that includes the word “means” creates a rebuttable presumption that the drafter intended to invoke the means-plus-function provision of 35 U.S.C. § 112 ¶ 6. Rodime PLC v. Seagate Tech., Inc., 174 F.3d 1294, 1303-04 (Fed. Cir. 1999). The presumption may be rebutted (1) if the claim limitation recites no function corresponding to the means or (2) if the claim limitation itself recites sufficient structure for performing the recited function. Id. Respondents in their replies argued that the

differing opinions of the parties' experts on a question of law<sup>3</sup> do not change the fact that there is no material issue of disputed facts and the construction of the means-plus-function limitations is ripe for resolution, and thus, there is no issue of material fact precluding summary determination merely because experts Wood and Pratt disagree as to whether the claims provide sufficient structure to overcome the presumption of § 112, ¶ 6. Based on the legal analyses provided by the private parties the administrative law judge is not prepared, at the present time, to decide the construction of any means-plus-function limitations. See Certain Condensers supra.

In addition with reference to Motion No. 670-16 and merely as illustrative, see complainant's responses to respondents' statement of "undisputed" facts 8, 9, 10, 11, 15, 16, 18, 19, 21, 22, 24, 26, 29, 30, 31, 33, 35, 39, 41, 42, 45 and 46.<sup>4</sup> Also with reference to Motion No. 670-

---

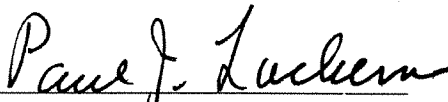
<sup>3</sup> See e.g. complainant's John D. Pratt Rebuttal Report (Motion No. 670-16 Exhibit 7/Motion No. 670-017 Exhibit 9) at 21-26 (opining that all the asserted claims explicitly recite sufficient structure for the "support means" and "locking means" based on the knowledge of a person of ordinary skill in the art) and respondent's Kristin L. Wood Invalidity Report (Exhibit 3 to both motions) at 25-28 (opining that the claims do not recite sufficient structure for the "support means" and "locking means" based on the knowledge of a person of ordinary skill in the art). The determination as to the means-plus-function status of the claims can affect the entire claim construction and anticipation/obviousness analysis, because what is included in the literal and equivalent scope of the asserted claims varies depending on whether the limitations are deemed to be means-plus-function limitations. See, e.g., Cross Medical Products, Inc. v. Medtronic Sofamor Danek, Inc., 424 F.3d 1293, 1315 (Fed. Cir. 2005) (structural equivalents under § 112, ¶ 6 are included within literal infringement of means-plus-function claims) (citations omitted).

<sup>4</sup> See for example, disputes whether the use of gravity alone was a "new feature" (Staff Resp. To Stmt. Of Undisputed Facts at ¶¶6-9); the meanings of "pivotally fixed" and "pivotally mounted" (id. at ¶¶10-11); whether the "ninth embodiment" of the '097 patent uses "friction from a normal force" or "Coulomb friction" (id. at ¶15); whether serration locking members require blocking (Comp. Resp. To Stmt. Of Undisputed Facts at ¶15); whether the asserted claims were fully described first in the application for the '097 patent (id. at ¶40); and whether the asserted claims of the '097 patent include means-plus-function limitations. (Id. at 38.) Furthermore, a number of the allegedly undisputed "facts" are, in reality, legal conclusions as to, for example, invalidity and prior art. (Id. at ¶¶20, 23, 25, 30, 32.) Also complainant has argued

17 and merely as illustrative, see complainant's responses to respondents' statement of "undisputed" facts 3, 4, 5, 8, 10, 12, 14, 18, 19, 25, 26, 9, 34, 35, 36, 37, 38, 39, 40, 44, 48, 49, 53, 54, 56, 57, 60 and 61.

Based on the foregoing, and looking at the evidence in a light most favorable to complainant, Motion Nos. 670-16 and 670-17 are denied.

This order will be made public unless a bracketed confidential version is received no later than the close of business on November 13, 2009.

  
Paul J. Luckern  
Chief Administrative Law Judge

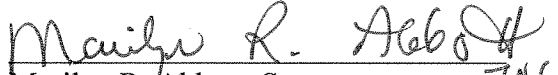
Issued: November 4, 2009

---

that the AU '587 reference was published on May 9, 1991, and thus cannot be prior art to the '448 parent application (to which the '097 patent claims priority), which has a priority date of October 31, 1990.

PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **Public Version Order** has been served by hand upon the Commission Investigative Attorney, Heidi E. Strain, Esq., and the following parties as indicated, on November 17, 2009.

  
Marilyn R. Abbott, Secretary JN6  
U.S. International Trade Commission  
500 E Street, SW  
Washington, DC 20436

**Counsel for Complainant:**

V. James Adduci, II, Esq.  
**Adduci Mastriani & Schaumberg LLP**  
1200 Seventeenth Street NW - Fifth floor  
Washington, DC 20036  
P-202-467-6300

- Via Hand Delivery  
 Via Overnight Mail  
 Via First Class Mail  
 Other: \_\_\_\_\_

**Counsel for Respondents CompX International, Inc. & Waterloo Furniture Components Ltd.:**

Frederic M. Meeker, Esq.  
**Banner & Witcoff, Ltd.**  
1100 13<sup>th</sup> Street, NW  
Suite 1200  
Washington, DC 20005-4051  
P-202-824-4051  
F-202-824-3001

- Via Hand Delivery  
 Via Overnight Mail  
 Via First Class Mail  
 Other: \_\_\_\_\_

CERTAIN ADJUSTABLE KEYBOARD SUPPORT SYSTEMS  
AND COMPONENTS THEREOF

Inv. No. 337-TA-670

PUBLIC MAILING LIST

Heather Hall  
LEXIS-NEXIS  
9443 Springboro Pike  
Miamisburg, OH 45342

Via Hand Delivery  
 Via Overnight Mail  
 Via First Class Mail  
 Other: \_\_\_\_\_

Kenneth Clair  
Thomson West  
1100 Thirteen Street, NW, Suite 200  
Washington, DC 20005

Via Hand Delivery  
 Via Overnight Mail  
 Via First Class Mail  
 Other: \_\_\_\_\_

**(PARTIES NEED NOT SERVE COPIES ON LEXIS OR WEST PUBLISHING)**