

PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of)
)
CERTAIN ADJUSTABLE KEYBOARD)
SUPPORT SYSTEMS AND)

COMPONENTS THEREOF)

Investigation No. 337-TA-670

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Order No. 25: Denying Respondents' Motion Nos. 670-20 For Summary Determination Regarding Infringement

On October 2, 2009, respondents CompX International, Inc. and Waterloo Furniture Components Ltd. d/b/a CompX Waterloo (CompX) moved for summary determination regarding infringement. (Motion Docket No. 670-20.)

The staff, in a response dated October 14, 2009, argued that Motion No. 670-20 should be denied in its entirety.

Complainant Humanscale Corporation (Humanscale), in a response filed October 15, 2009, argued that Motion No. 670-20 should be denied.¹

On October 19, 2009, complainant filed an unopposed motion to amend its response to respondents' statement of material facts with respect to Motion No. 670-20. (Motion Docket No. 670-25.) Said Motion No. 670-25 is granted.

On October 26, 2009, respondents moved for leave to file an attached reply to complainant's opposition to Motion No. 670-20 to correct "misstatements" of law and fact. (Motion Docket No. 670-30.) It was represented that complainant opposed the filing of said

¹ Complainant on October 15, 2009 moved for leave to file its opposition to Motion No. 670-20 late and requested that respondents and the staff have no opposition. (Motion Docket No. 670-24.) Said Motion No. 670-24 is granted.

motion and the staff reserved its position on said motion. On October 28, 2009, complainant in a filing opposed said motion. Motion No. 670-30 is granted.

Pursuant 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 Condensers, 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 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.)

Resolution of the question of infringement of patent claims requires a two-step analysis. First, the patent claims must be construed, as a matter of law, to determine their scope and meaning. Second, a factual inquiry must be conducted in order to compare the claims, as properly construed, to the accused device or process. See MBO Labs., Inc. v. Becton, Dickinson & Co., 474 F.3d 1323,

1329 (Fed. Cir. 2007); see also Zelinski v. Brunswick Corp., 185 F.3d 1311, 1315 (Fed. Cir. 1999) (citing Markman, 52 F.3d at 976). The second step of the infringement analysis, which is a factual inquiry, focuses on whether the patent claims encompass the accused device or process literally or under the doctrine of equivalents. Zelinski, 185 F.3d at 1315. Complainant bears the burden of demonstrating infringement by a preponderance of the evidence. Cross Med. Prods., Inc. v. Medtronic Sofamor Danek, Inc., 424 F.3d 1293, 1310 (Fed. Cir. 2005). To prove literal infringement, complainant must show that an accused product contains every limitation in the asserted claims. WMS Gaming Inc. v. Int'l Game Tech., 184 F.3d 1339, 1350 (Fed. Cir. 1999). Alternatively, the accused products may also infringe the patent claims under the doctrine of equivalents if the differences between the accused products and the claimed invention are “insubstantial.” Desper Prods. Inc. v. QSound Labs, Inc., 157 F.3d 1325, 1338 (Fed. Cir. 1998). Equivalency of an element of a claim to an element of an accused device is determined on an element-by-element basis at the time of infringement. Warner-Jenkinson Co. v. Hilton Davis Chem. Co., 520 U.S. 17, 40 (1997); Certain Electric Robots and Component Parts Thereof, Inv. No. 337-TA-530, Final Initial and Recommended Determinations, 2005 ITC LEXIS 868, at *107 (Dec. 19, 2005) (unreviewed).

No claim construction has issued in this investigation. Thus respondents rely upon constructions for claims 6, 7, 11, 26, 27, 34, 37, and 38 provided by their expert Wood. (Motion No. 670-20 at 12; Stmt. Of Undisputed Facts at ¶¶10-11.) Complainant, however, contests these constructions and any non-infringement contentions based thereon. (Comp. Resp. to Stmt. Of Undisputed Facts at ¶¶10-11, 13.) Taking these facts in the light most favorable to complainant, the administrative law judge finds a genuine issue of material fact regarding the construction of the


asserted claims.

Additionally, respondents allege that complainant has not provided “any analysis, opinion, or evidence of how the accused Waterloo brake shoe products infringe any of the asserted claims of the ‘097 patent under the doctrine of equivalents.” (Motion No. 670-20 at 14.) This assertion is disputed by complainant. (Comp. Resp. to Stmt. of Undisputed Facts at ¶¶15- 16.) Moreover, complainant’s expert Pratt’s expert report lays out an analysis of at least one claim term under the doctrine of equivalents. (Opp., Ex. 1 at 32-35.)

Additionally, complainant disputes respondents’ description of the functionality of the accused products. (Comp. Resp. to Stmt. of Undisputed Facts at ¶¶17-23, 25-26, 29-32.) Because any finding of infringement or non-infringement depends upon the functionality of an accused device, summary determination of non-infringement is precluded when there are disputes of fact related to said functionality.

Based on the foregoing, and looking at the evidence in a light most favorable to complainant, Motion No. 670-20 is 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

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.


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CERTAIN ADJUSTABLE KEYBOARD SUPPORT SYSTEMS
AND COMPONENTS THEREOF

Inv. No. 337-TA-670

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