Farberware Inc. v. Alternative Pioneer Systems Inc.

U.S. District Court Southern District of New York 28 USPQ2d 1878

Decided July 1, 1993
No. 90 Civ. 4163 (KC)

Headnotes

PATENTS

1. Infringement -- Construction of claims (§ 120.03)

Patent construction -- Claims -- Means (§ 125.1307)

Summary judgment of non-infringement of patent claim directed to convection oven is denied, since genuine factual disputes exist as to whether grid member of patented device is included in "electrical heater means" of means-plus-function claim in question, as to whether heating mechanism in accused oven functions in manner identical to, and is structural equivalent of, "electrical heater means" of claim, and as to whether heating mechanism in accused oven and "electrical heater means" of claim perform substantially same function in substantially same way.

Particular patents -- General and mechanical -- Oven

3,828,760, Farber and Belinkoff, oven, summary judgment of non-infringement of claim 15 denied.

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Case History and Disposition:

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Action by Farberware Inc. against Alternative Pioneer Systems Inc. d/b/a American Harvest, for patent infringement. On defendant's motion for summary judgment of non-infringement

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of claim 15 of patent in suit. Denied.

Attorneys:

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Opinion Text

Opinion By:

Conboy, J.

Plaintiff Farberware Inc. ("Farberware") brought this action alleging an infringement of Claim 15 in United States Patent Number 3,828,760 (United States Patent Number 3,828,760, Exhibit A in Affidavit of Mark D. Schuman, Jan. 25, 1993) (hereinafter the " '760 patent"). Claim 15 in the '760 patent is directed to a device commonly known as a convection oven. The allegedly infringing American Harvest convection oven is sold under the name "Jet-Stream Oven."

American Harvest has requested summary judgment of non-infringement. Its motion is limited to one specific element in claim 15. American Harvest asserts that the Jet-Stream Oven does not include any structure that can be classified as an "electrical heater means . . . for radiantly heating food in the cooking chamber. . . ." *See* '760 Patent, Claim 15, columns 8-9. For the reasons set forth below, the Court denies the defendant's motion.

Discussion

On a motion for summary judgment, the Court must view the evidence in a light most favorable to the non-moving party, Farberware, and draw all reasonable inferences in its favor.

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See Moeller v. Ionetics, Inc. , 794 F.2d 653, 656 [229 USPQ 992] (Fed. Cir. 1986). Summary judgment is inappropriate where there are genuine issues of material fact.1

[1] The Court finds that genuine issues of material fact do exist, precluding summary judgment. 2 We find that a genuine issue of material fact exists as to whether the "electrical heater means" includes the grid member of the '760 patent. Although claim construction is a legal question, underlying factual disputes in relation to extrinsic evidence might exist, precluding summary judgment treatment of claim construction. *Moeller* , 794 F.2d at 657. In this case, Farberware claims that the grid member is not included in the "electrical heater means," and American Harvest maintains that it is. This factual dispute and the relevant extrinsic evidence prevent summary judgment.

In addition, Farberware has presented evidence to establish the existence of a factual dispute with respect to the "means-plus-function" analysis under 35 U.S.C. Section 112(6). Specifically, there are factual disputes as to whether the heating mechanism in the Jet-Stream Oven functions in an identical manner as the electrical heater means in the '760 patent, and as to whether

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the heating mechanism in the Jet-Stream Oven is an equivalent structure as the "electrical heater means" in the '760 patent. With respect to the doctrine of equivalents, Farberware has presented evidence of a factual dispute both as to whether the heating mechanism in the Jet-Stream Oven "performs substantially the same overall function" as the electrical heater means in the '760 patent, and as to whether the two mechanisms perform "in substantially the same way." *Pennwalt Corp.*, 833 F.2d at 934.

Conclusion

Viewing the evidence in a light most favorable to the plaintiff, the Court finds that disputed issues of material fact exist concerning the alleged infringement of Farberware's '760 patent. Accordingly, we deny the defendant's motion for summary judgment.

SO ORDERED.

Footnotes

Footnote 1. *See Tillotson, Ltd. v. Walbro Corp.*, 831 F.2d 1033 [4 USPQ2d 1450] (Fed. Cir. 1987) ("The issue of material fact required to be present in order to entitle the non-moving party to proceed to trial in the face of a motion for summary judgment need not be resolved conclusively in favor of the non-moving party. 'All that is required is a showing of sufficient evidence supportive of the existence of the claimed factual dispute to require a judge or jury to resolve the differing versions of the truth through a trial.' " *Id.* at 1039, *citing Lemelson v. TRW, Inc.* , 760 F.2d 1254, 1260-61 [225 USPQ 697] (Fed. Cir. 1985).

Footnote 2. Farberware maintains that defendant's JetStream Oven is a literal infringement,

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under the "means-plus-function" language of 35 U.S.C. Section 112(6), or, in the alternative, that defendant's oven is an infringement under the doctrine of equivalents. In order to determine whether the defendant's oven is an infringement under 35 U.S.C. Section 112(6), "the Court must compare the accused structure *with the disclosed structure* , and must find equivalent *structure* as well as *identity* of claimed *function* for that structure." *Pennwalt Corp. v. Durand-Wayland, Inc.*, 833 F.2d 931, 934 [4 UPQ2d 1737] (Fed. Cir. 1987), *cert. denied* 485 U.S. 961 (1988) (emphasis in original). "Under the doctrine of equivalents, infringement *may* be found (but not necessarily) if an accused device performs substantially the same overall function or work, in substantially the same way, to obtain substantially the same overall result as the claimed invention." *Id.* (emphasis in original). The determination of "equivalents" for purposes of literal infringement under 35 U.S.C. Section 112(6) and the determination of infringement by the doctrine of equivalents are both questions of fact. *Palumbo v. Don-Joy Co.*, 762 F.2d 969, 975 [226 USPQ 5] (Fed. Cir. 1985); *Hartness Intern. Inc. v. Simplimatic Engineering Co.* , 819 F.2d 1100, 1110 [2 USPQ2d 1826] (Fed. Cir. 1987).

- End of Case -

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