

**Keywords:** Claim construction, literal infringement, means-plus-function claims

**General:** District court properly entered judgment as matter of law that accused excimer laser eye surgical device does not infringe asserted claims of plaintiff's laser surgery patents because evidence of record does not support conclusion that accused device meets "beam dimension control means" or "means for focusing" limitations of claims at issue.

*Summit Technology Inc. v. Nidek Co.*  
70 U.S.P.Q.2d 1276 (Fed. Cir. 2004)  
Decided March 26, 2004

## **I. Facts**

Summit Technology Inc. ("Summit") sued Nidek Co. ("Nidek") for infringement of U.S. Patent No. 4,941,093 ("the '093 patent") and U.S. Patent No. 4,973,330 ("the '330 patent"). The '093 and '330 patents are directed to laser vision correction systems and methods. Examples of the techniques described in the patents are LASIK and PRK. The '093 patent relates to the removal of differing amounts of corneal material to correct refractive vision problems. The '330 patent relates to focusing a beam of light onto the anterior surface of the eye. At trial, a jury found that Nidek willfully infringed the claims of both patents.

Nidek subsequently filed a motion for judgment as a matter of law on the issues of infringement and willfulness. In its motion, Nidek contended that the jury had incorrectly interpreted two means-plus-function claim elements: the '093 patent's recitation of "beam dimension control means" and the '330 patent's "means for focusing." The district court granted Nidek's motion and Summit filed this appeal to the Federal Circuit.

## **II. Issue**

Did the evidence adduced at trial support the jury's finding that Nidek's products included the claimed "beam dimension control means" and "means for focusing"?

## **III. Discussion**

No. In finding for Nidek on the motion for judgment as a matter of law, the district court concluded that Summit had failed to provide even a scintilla of evidence that Nidek's products included the "beam dimension control means" required by the '093 patent or the "means for focusing" required by the '330 patent.

With respect to the "beam dimension control means" of the '093 patent, the district court concluded that this limitation should be construed to require pulses that "have substantially the same energy per unit area" as evidenced by the fact that the pulses ablate "approximately the same depth of material." Summit argued that it presented substantial evidence based on expert testimony, admissions of Nidek's expert and Nidek's statements to the FDA. At trial, however, Summit's expert testified that pulses produced by Nidek's accused devices did not produce a uniform depth of ablation. Nidek additionally presented evidence that the pulses of its product do not ablate the cornea at approximately the same depth. Moreover, the experts for Summit and Nidek actually agreed that the Nidek product provides a non-uniform energy distribution. Accordingly, the Federal Circuit affirmed the judgment as a matter of law with respect to Nidek's non-infringement of the '093 patent.

With respect to the “means for focusing“ limitation of the ‘330 patent, the district court concluded that the function of the means was to “focus the beam to direct a spot of light onto the front surface of the cornea.” The claim construction approved by the district court also required that the spot of light “is at least as large as the area of the cornea one wishes to operate upon.” Summit argued that it presented substantial evidence that Nidek’s accused products included this limitation, and bolstered its position with three alternative arguments. Those three arguments were (1) that the “area of the cornea one wishes to operate on” is dynamic, (2) that Nidek’s product combines different laser pulses into one beam, and (3) that Nidek’s description of its product implies infringement.

The Federal Circuit concluded that Summit’s argument that the area of operation is dynamic was not consistent with the district court’s proper claim construction. Accordingly, Summit’s evidence could not be considered sufficient to sustain the jury verdict of infringement.

In order to prevail on its second argument, the Federal Circuit stated that Summit must have established at trial that “Nidek’s device is capable of creating a single light spot, the maximum area of which is ‘at least as large as the area of the cornea desired to be operated upon.’” Instead, the evidence adduced at trial showed that the Nidek product employed multiple beams of light to cover the area being treated. The evidence further showed that the multiple beams occur at different time intervals and could not be considered as a single, combined beam. Thus, Summit’s second argument did not carry the day.

Summit’s third argument was an attempt to combine statements in Nidek’s advertising materials with a convoluted interpretation of the testimony of a Nidek expert. The Federal Circuit quickly dispatched the argument by citing the trial transcript. Accordingly, the district court’s judgment as a matter of law in favor of Nidek was affirmed.

#### **IV. Conclusion**

This case points up the need for a specialized court to try patent cases. Clearly, the case includes complex subject matter. In spite of a concise, correct claim construction provided by the district court, the jury proved unable to sort through the complex morass of expert testimony.