

Keywords: literal infringement; doctrine of equivalents; claim scope; claim interpretation

General: Patentee may not utilize the doctrine of equivalents to increase claim scope to include subject matter either expressly or impliedly excluded by the patent itself.

Gaus v. Conair Corp.

70 U.S.P.Q.2d 1380 (Fed. Cir. 2004)

April 1, 2004

I. Facts

Dr. Gaus (hereinafter “Gaus”) owns U.S. Patent No. 4,589,047 (hereinafter “the ‘047 patent”), which relates to shock-prevention circuitry for an electrical appliance, such as a hair dryer. In summary, Gaus’s shock-prevention circuitry includes “a pair of spaced-apart electrically exposed conductive probe networks” that, when introduced to water, allows current to flow through a fuse-like resistance element, melting the element and, in turn, preventing current from reaching the “voltage carrying portions” of the appliance, e.g., the blower and heater of a hair dryer.

Gaus filed suit against Conair, alleging that certain of Conair’s hair dryers infringed the ‘047 patent. Specifically, Gaus alleged that Conair’s hair dryers infringed claim 12 of the ‘047 patent, which recites as follows:

a housing, said housing having at least one opening and said housing comprising an electrical operating unit and a pair of spaced-apart electrically exposed conductive probe networks, said pair being responsive to the entry of a conductive fluid electrically reducing the impedance between said probe networks of said pair....

The protective circuitry in Conair’s hair dryers includes a single sense wire--rather than a pair of probes--that cooperates with the “voltage operating portions” of the hairdryer to prevent inadvertent shock. In short, when water is introduced between the single sense wire and the voltage operating portion of the hair dryer, current flows through the hair dryer’s protection circuitry and, resultantly, disconnects the hair dryer from its power supply.

The district court held on summary judgment that Conair’s hair dryers did not literally infringe the ‘047 patent. However, the district court denied Conair’s request for summary judgment of noninfringement under the doctrine of equivalents, thus sending the case to the jury. The jury found that Conair infringed the ‘047 patent under the doctrine of equivalents, and that this infringement was willful. The jury awarded Gaus \$28.5 million in compensatory damages, and the district court enhanced that award by \$8.5 million because of the finding of willful infringement. Conair appealed.

II. Issue

- A. Did the district court properly deny Conair’s request for summary judgment of noninfringement under the doctrine of equivalents?

III. Discussion

- A. No. In contrast to the district court, the Federal Circuit determined that the '047 patent is limited under both literal infringement and the doctrine of equivalents to a device in which the "pair of... probe networks" is distinct from the device's primary components, i.e., its "electrical operating unit." The Federal Circuit, citing *SciMed Life Sys., Inc. v. Advanced Cardiovascular Sys., Inc.*, (242 F.3d 394, 399, 29 U.S.P.Q.2d 1767 (Fed. Cir. 1994)), held that a particular structure can be deemed outside the reach of the doctrine of equivalents if such a structure was clearly excluded, whether expressly or impliedly, by the patent. In view of this precedent, the Federal Circuit found that the '047 patent excluded from coverage devices having a cooperative protection circuit, as is found in the Conair hair dryers.

To reach this conclusion, the Federal Circuit looked to the text of the '047 patent itself. First, the Federal Circuit asserted that portions of the '047 patent describing the benefits and objectives of the "invention" require the probe networks be separate from the operating unit, because a cooperative system like Conair's could not effectuate these same benefits. Secondly, the Federal Circuit highlighted the '047 patent's criticism of prior art appliances in which the protective circuitry required water to come in contact with the primary components before triggering, as is the case in the Conair hair dryers. In summary, '047 patent described that such cooperative protection circuitry reacts relatively slowly and, thus, can lead to non-lethal but undesirable shocking of the user.

Having found that Gaus had disavowed coverage of devices having a cooperative arrangement in which the protective circuitry included the primary components of the appliance, the Federal Circuit did not permit Gaus to reclaim "surrendered claim coverage by invoking the doctrine of equivalents."