

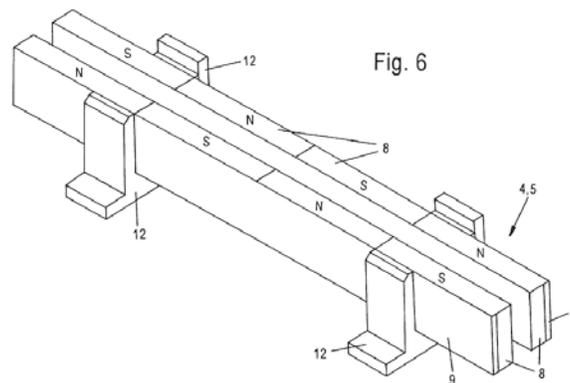
Keywords: Claim construction; summary judgment; Rule 11

General: When construing a claim element, the ordinary meaning of the term must be considered in the context of the rest of the claim. The claim element may be construed broadly unless other elements of the claim require a narrower construction. Furthermore, to avoid Rule 11 sanctions, a reasonable inquiry before filing an infringement suit may not require complete deconstruction and analysis of the allegedly infringing product.

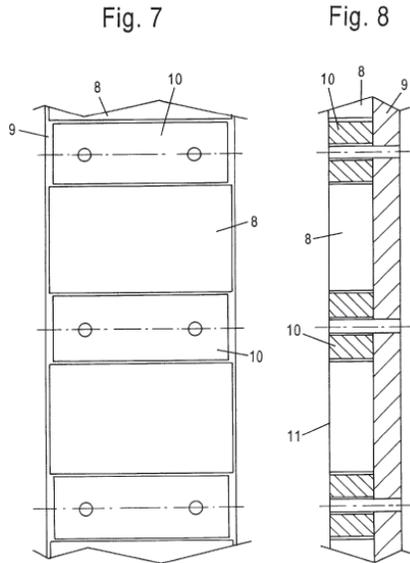
Intamin LTD. v. Magnetar Technologies Corp.
(Fed. Cir. Docket No. 05-1546)
Decided April 18, 2007

I. Facts

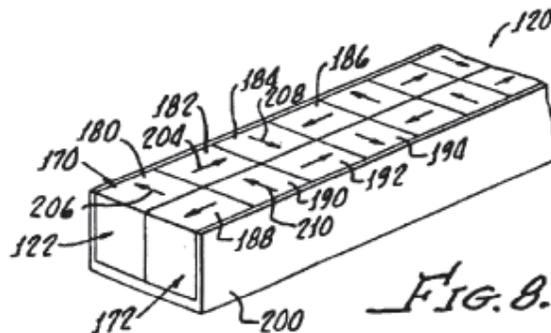
Intamin Ltd. holds Patent No. 6,062,350 (the '350 patent) entitled "Braking System for an Amusement Device." The '350 patent discloses a roller coaster braking system using magnetic eddy currents resulting from a conductor passing through a gap between two sets of magnets. Figure 6 of the '350 patent, reproduced below, illustrates a series of magnets (8) having opposite polarity attached end-to-end to a rail (9).



In another embodiment, illustrated in Figures 7 and 8, reproduced below, the magnets (8) are attached to the rail (9) with an intermediary (10) between each magnet (8).



Magnetar sells a roller coaster braking system utilizing a Halbach array, illustrated below¹, in which adjacent magnets have polarities rotated by 90 degrees rather than 180 degrees, as in the '350 patent. Utilizing the Halbach array creates a one-sided flux in which the magnetic force is concentrated on one side of the array while it is nearly cancelled out on the other side of the array. In the Magnetar product, the magnets are joined together in two rows with epoxy and placed into a metal tube. The metal tubes are then attached to the roller coaster track, and a conductive rail is attached to the passenger car.



Intamin sued Magnetar for infringement of claim 1 of the '350 patent. Claim 1 recites:

1. A braking device for use with an amusement apparatus having a fixed device part, at least one running rail secured to the fixed device part, and a movable device part including at least one traveling gear configured for movement along the at least one running rail, the braking device comprising:

an eddy current brake assembly including:

a conducting part having at least one conductive rail configured for attachment to the fixed device part, said at least one conductive rail being adapted to extend the length of the fixed device part;

¹ While Figure 8 was taken from Patent No. 6,659,237, assigned to Magnetar, this patent is not at issue in the present case.

an energizing portion having at least one yoke aligned in correspondence with each said at least one conductive rails, each said yokes including a pair of yoke arms for receiving said at least one conductive rail therebetween;

at least one pair of carrying rails extending a predetermined distance along the direction of said at least one conductive rail, each said carrying rails being mounted on corresponding yoke arms of said plurality of yokes;

a plurality of magnet elements mounted on each of said carrying rails with alternating polarities, said plurality of magnet elements being further arranged such that the poles of magnet elements mounted on one carrying rail have opposite polarities from the poles of magnet elements mounted on a corresponding carrying rail of said at least one pair of carrying rails; and

an intermediary disposed between adjacent pairs of said plurality of magnet elements;

wherein:

an interferric gap is defined between each said yoke arms and the at least one conductive rail, and

movement of the movable device part, relative to the fixed device part, induces eddy currents that create a magnetic brake force between said conducting part and said energizing part.

The District Court found on summary judgment that the Magnetar brake did not infringe claim 1 of the '350 patent for the following reasons:

1. The Magnetar brake does not include “an intermediary disposed between adjacent pairs of said plurality of magnet elements” because a magnet cannot be an intermediary;
2. The Magnetar brake does not include “at least one conductive rail configured for attachment to the fixed device part”; and
3. The Magnetar brake does not include “at least one conductive rail being adapted to extend the length of the fixed device part” as this claim language requires the conductive rail to extend the entire length of the fixed device part.

Furthermore, the District Court initially granted Rule 11 sanctions because Magnetar asserted that the litigation was in direct response to public criticism of Intamin’s brakes and Intamin’s complaint was frivolous. The District Court later determined that while Intamin filed the complaint for an improper purpose, it was not frivolous.

II. Issues on Appeal

On appeal to the Federal Circuit, the following issues were raised:

1. Does Magnetar’s brake system infringe Intamin’s ‘350 patent?
2. Was the District Court correct in vacating the Rule 11 sanctions?

III. Discussion

In regard to the summary judgment of non-infringement, the Federal Circuit vacated part of the District Court’s claim construction and remanded the case to the District Court for further investigation.

The Federal Circuit reviews claim construction *de novo*. The Federal Circuit considered the construction of the “intermediary” element of claim 1, as well as the limitation that the conductive rail “extend the length” of the tracks.

The Federal Circuit determined that the “intermediary” element of claim 1 is not limited to non-magnetic elements. Specifically, the claim limitation does not require that the intermediary be non-magnetic. The plain meaning of the term “intermediary” is “a member between others.” In addition, dependent claim 2 recites, “The braking device of claim 1 wherein said intermediary is non-magnetic.” Accordingly, in view of the plain meaning of the term and the doctrine of claim differentiation, the term “intermediary” may include magnets.

However, this claim construction raises a new issue. Claim 1 recites “a plurality of magnet elements mounted on each of said carrying rails with alternating polarities.” For the term “intermediary” to include magnets, the term “alternating polarities” must mean “opposite polarities.” That is, some of the magnets in the Halbach array would be considered magnet elements “with alternating polarities” while the magnets therebetween would be considered “intermediaries.” Accordingly, the Federal Circuit remanded this claim construction to the District Court for further consideration.

The Federal Circuit did not find fault with the District Court’s construction of the limitation that the conductive rail extends the full length of the tracks. The plain meaning of the term “extend the length” is “reaches from one end to another.” Furthermore, the Federal Circuit pointed out that the term “length” is not used in the specification or other claims to indicate a direction, but rather a distance.

In regard to the Rule 11 sanctions, the Federal Circuit affirmed the District Court’s decision to vacate the sanctions.

Ninth Circuit law states that “sanctions must be imposed on the signer of a paper if either a) the paper is filed for an improper purpose, or b) the paper is ‘frivolous.’”² In addition, “complaints are not filed for an improper purpose if they are non-frivolous.”³ Finally, “a ‘frivolous’ claim or pleading for Rule 11 purposes [is] one that is ‘legally or factually “baseless” from an objective perspective ... [and made without] a reasonable and competent inquiry.’”⁴

Magnetar asserts that Intamin did not conduct a good faith investigation because they did not acquire and take apart the metal casing in which the magnets are stored in the Magnetar product.

Intamin did, however, determine the scope of their patent’s claims and perform an infringement analysis.⁵ In addition, Intamin reviewed publicly available documents relating to Magnetar’s brake system and reviewed the brake system with experts. While in some circumstances courts have required a more thorough review of the allegedly infringing device,⁶ Intamin’s actions were adequate in this situation because of limitations of the technology and access to the allegedly infringing device.

² *Townsend v. Holman Consulting Corp.*, 929 F.2d 1358, 1362 (9th Cir. 1990) (en banc).

³ *Id.*

⁴ *Q-Pharma, Inc. v. Andrew Jergens Comp.*, 360 F.3d 1295, 1299 (Fed. Cir. 2004) (citing *Christian v. Mattel, Inc.*, 286 F.3d 1118, 1127 (9th Cir. 2002)).

⁵ The Court does not specify details of the infringement analysis.

⁶ See *Judin v. United States*, 110 F.3d 780, 784 (Fed. Cir. 1997) (patentee who failed to obtain a sample of the product as part of its pre-filing investigation warrants Rule 11 sanctions).