

**Keywords:** summary judgment that a claim is not invalid based solely on the claim surviving reexamination, indefiniteness for claim terms of degree, damages calculation, willfulness, laches

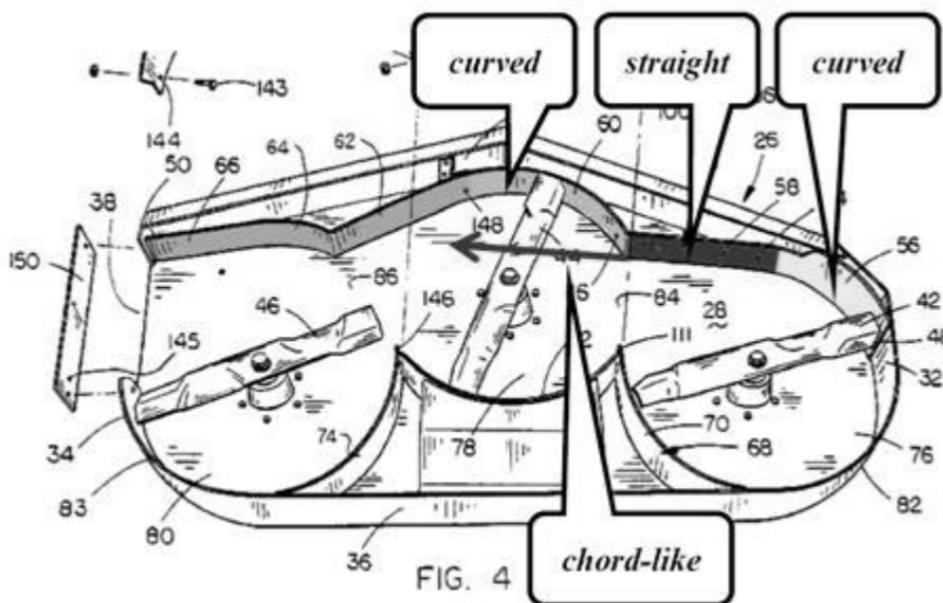
**General:** (1) Claims surviving reexamination cannot be the sole basis for granting summary judgment that a claim is not invalid, (2) terms of degree do not require numerical precision to be definite, (3) damages apportionment can be done via the royalty base or the royalty rate.

*Exmark Mfg. Co. v. Briggs & Stratton Power Prods. Grp., LLC*  
 (Federal Circuit, 2018)  
 Decided January 12, 2018

**I. Facts**

Exmark Manufacturing Company (“Exmark”) owns U.S. Patent No. 5,987,863 (“the ’863 patent”) directed to a multiblade lawn mower, including:

a first flow control baffle... comprising a first arcuate baffle portion... a first elongated and substantially straight baffle portion... extending from [a] second end of said first arcuate baffle portion, a second arcuate baffle portion... which extends from [a] second end of said first elongated and substantially straight baffle portion... said first elongated and substantially straight baffle portion being angularly disposed with respect to...[a] circle defined by [a] blade tip path of [a] second cutting blade in a chord-like fashion so that cuttings from [a] first cutting blade will be deflected inwardly within the said circle defined by the blade tip path of said second cutting blade



Exmark requested a reexamination of the '863 patent. Following completion of the reexam, Exmark sued Briggs & Stratton Power Products Group, LLC ("Briggs & Stratton") and Schiller Grounds Care, Inc. ("Schiller") for infringement of claim 1 of the '863 patent. Briggs & Stratton and Schiller then each requested reexamination of the '863 patent based on the same prior art references as the first reexamination. The infringement suit proceedings were stayed until completion of the reexaminations. Upon completion of the reexaminations, the district court:

- (1) granted Exmark's motion for summary judgment that the '863 patent was not invalid based solely on the fact that the claim had survived multiple reexaminations,
- (2) denied Briggs & Stratton's motion for summary judgment of indefiniteness of claim 1,
- (3) found that Briggs & Stratton infringed the '863 patent and awarded Exmark \$24,280,330 in compensatory damages,
- (4) found that Briggs & Stratton's infringement of the '863 patent was willful and doubled the damages award as enhanced damages,
- (5) denied Briggs & Stratton's motions for new trials on damages and willfulness, and
- (6) denied Briggs & Stratton's defense of laches

Briggs & Stratton appealed. Schiller declined to join the appeal.

## II. Issues

- A. Did the district court err in entering summary judgment that claim 1 of the '863 patent was not invalid based solely on the fact that the claim had survived multiple reexaminations?
- B. Did the district court err in denying summary judgment of indefiniteness with respect to claim 1 of the '863 patent?
- C. Did the district court err in denying new trials on damages and willfulness and denying Briggs & Stratton's laches defense?

## III. Discussion

- A. Yes, the district court erred in entering summary judgment that claim 1 of the '863 patent was not invalid. The court found that the district court erred in entering summary judgment that claim 1 of the '863 patent was not invalid because the district court appeared to only consider that the

claim had survived three reexaminations based on the same prior art. The court noted that all issued patents, whether reexamined or not, are *presumed* valid, but this presumption can be rebutted by a defendant at trial. Though it may be reasonable for a district court to enter summary judgment that a claim is not invalid based on consideration of multiple factors, it cannot do so based solely on the claim surviving one or more reexaminations. Just as the original examination at the USPTO does not foreclose an invalidity finding at trial, neither does reexamination.

Exmark argued that by requesting reexamination of the '863 patent, Briggs & Stratton had chosen its forum to challenge the validity of the '863 patent and lost, and that it was unfair for Briggs & Stratton to get a second opportunity to challenge the validity of the '863 patent at trial. The court disagreed and noted that there are significant differences in challenging the validity of a patent in reexam and doing so in district court, especially with regard to claim construction. Here, Exmark persuaded the district court to adopt a broader construction of the claims than the USPTO adopted during reexamination. Accordingly, the court stated that Briggs & Stratton should have an opportunity to argue that the broader construction of claim 1 was anticipated by or obvious in view of the cited prior art.

- B. No, the district court did not err in denying summary judgment of indefiniteness with respect to claim 1 of the '863 patent. The court determined that the patent included sufficient disclosure that a person of ordinary skill in the art would understand what constitutes an “elongated and substantially straight” baffle. The court noted that the “elongated and substantially straight” baffle was recited in the claims relative to the first and second arcuate baffle portions, was described in the specification, was shown in the figures, and that functional language in the claim and specification provided additional guidance. The court noted that when using such terms of degree, no numerical precision is required.
- C. Yes, the district court erred in denying a new trial on damages. The court found that Exmark’s expert’s testimony justifying the proposed 5% royalty rate should have been excluded because the expert merely recited the *Georgia-Pacific* factors for determining a royalty rate and then made conclusory statements justifying a 5% royalty rate. The court noted that though damages must be apportioned to the patented improvement, this can be done via the royalty base or the royalty rate. Because claim 1 of the '863 patent was directed to a whole lawnmower, including the baffle and otherwise conventional components, the court found that using the sale price of the whole lawnmower as the royalty base and then setting the royalty rate based on the baffle’s contribution to the lawnmower was

reasonable. The court also found that the district court's exclusion of prior art that had not been commercialized was improper, but that excluding prior art not related to side-discharge mowers, and evidence of Exmark's delay in bringing suit were reasonable.

Yes, the district court erred in denying a new trial on willfulness. The court found that the district court improperly excluded evidence because it found Briggs & Stratton's defenses to be unreasonable without considering whether it was relevant to Briggs & Stratton's state of mind at the time of the accused infringement.

No, the district court did not err in denying Briggs & Stratton's laches defense because laches is not a defense against damages for patent infringement occurring within the six year statute of limitations period.

#### IV. **Conclusion**

A patent surviving reexamination cannot be the sole bases for entering summary judgment that the patent is not invalid. When claims recite terms of degree, no numerical precision is required (but it is probably a good idea to include anyway). Damages apportionment can be achieved via the royalty base or the royalty rate.