

PRELIMINARY INJUNCTION  
(PRECEDENTIAL)

REVISION MILITARY, INC. v. BALBOA MANUFACTURING CO., Appeal No. 2011-1628 (Fed. Cir. November 27, 2012). Before Newman, Clevenger and Linn. Appeal from D. Vt. (Judge Reiss).

Background:

Revision sued Balboa for infringement of its design patent claims directed to goggles. Revision moved for a preliminary injunction seeking to enjoin Balboa from marketing and selling its goggles. The district court denied the preliminary injunction.

In denying the preliminary injunction, the district court applied the Second Circuit's heightened standard of a "clear" or "substantial" likelihood of success on the merits, instead of the Federal Circuit's standard of "more likely than not." According to Second Circuit precedent, the heightened standard must be used if the preliminary injunction would alter the status quo. The district court applied the heightened standard because Balboa was already offering to sell the accused goggles to Revision's customers and reasoned that preventing such offers would alter status quo. Revision appealed.

Issue/Holding:

Did the district court err in applying the Second Circuit's standard of a "clear" or "substantial" likelihood of success on the merits? Yes, vacated and remanded.

Discussion:

The Federal Circuit confirmed that a preliminary injunction enjoining patent infringement pursuant to 35 U.S.C. §283 involves substantive matters unique to patent law, and, therefore is governed by the law of the Federal Circuit. Accordingly, the Federal Circuit concluded that Revision need not meet the Second Circuit's heightened "clear or substantial" standard, but rather the Federal Circuit's "more likely than not" standard.

The Federal Circuit also again confirmed that the "ordinary observer" in view of the "design as a whole" is the proper test for design patent infringement.