

FRANS NOOREN AFDICHTINGSSYSTEMEN B.V. v. STOPAQ AMCORR INC., Appeal No. 2013-1200 (Fed. Cir. February 21, 2014). Before Rader, Taranto, and Chen. Appealed from S.D. Tex. (Judge Hughes).

Background:

Nooren sued Amcorr for infringing an independent claim of one of its U.S. Patents directed to a composition used for insulating and protecting substrates (such as manhole covers, underground tanks, pipes and cable sleeves) from corrosion. The patent in question recites, in part, "a filler comprising a plurality of fractions each comprising different size particles, and wherein said different fractions have different particle size distributions."

The parties agreed to focus claim construction entirely on the recitation of "a filler." Amcorr argued that a filler referred only to one material, meaning one material in the filler must be represented by multiple fractions comprising different size particles of the same material. Nooren argued that a filler could refer to multiple materials, so several materials (that each consisted of only one size of particle) could meet the limitation requiring "a filler comprising a plurality of fractions each comprising different size particles." The district court agreed with Amcorr's analysis and issued an order granting summary judgment of non-infringement in favor of Amcorr. Nooren appealed.

Issue/Holding:

Did the district court err in holding that "a filler" referred only to one material that contained multiple fractions comprising different size particles? Yes, vacated and remanded.

Discussion:

The Federal Circuit found that there was no basis in the language or the specification for limiting "a filler" to one material. The district court showed no support from customary usage or anything in the specification that supported its position. Amcorr did present evidence of the ordinary meaning of the term "a filler." The district court however did not use the definition. Instead, the district court asserted that, during prosecution, the Examiner rejected the claims and requested claim amendments because two-filler materials were already patented. The Federal Circuit found no basis for this conclusion in the prosecution history, instead finding discussions that did not address the number of fillers at all.