

EPOS v. PEGASUS, Appeal No. 2013-1330 (Fed. Cir. Sept. 5, 2014). Before Hughes and Brayson (Rader did not participate). Appealed from the D.D.C. (Judge Nickerson).

Background:

Pegasus and Liudia own six patents related to pens that digitize writing and devices for retrofitting writing surfaces for digital capture of writing. EPOS manufactures products used to digitize writing that include a receiver unit with a spring-loaded, U-shaped clip-on bracket and a pen refill. In 2007, EPOS filed a complaint seeking declaratory judgment of non-infringement of four of the patents owned by Pegasus. Pegasus answered and countered asserting infringement of the four patents plus two from Liudia. After claim construction, EPOS moved for summary judgment of invalidity and noninfringement. The district court granted the motion for noninfringement, and in view of the motion, declined to address invalidity. Pegasus appealed, arguing that the district court erred in the claim construction of four terms.

Issue/Holding:

Did the district court err in its claim construction and granting declaratory judgment of non-infringement? Yes. Vacated-in-part, reversed-in-part and remanded.

Discussion:

In the assessment of claim construction, the district court interpreted four terms in the patents in its finding of noninfringement. In each, the Federal Circuit held that summary judgment of noninfringement was improper because of the district court's erroneous claim constructions.

The district court construed the term "drawing implement" as "a conventional writing utensil that can be used alone or together with the invention." The district court explained that the drawing implement is a stand-alone writing utensil, and does not include pen refills. The Federal Circuit disagreed, stating that while the preferred embodiments include "conventional," the specifications are not limited to "conventional" writing implements. Thus, a reasonable jury might find that a pen refill meets the "drawing implement" limitation as properly construed.

The Federal Circuit held that the other three terms were also improperly construed because the district court read limitations into the claim terms that had no support in the intrinsic records of each of the patents. The term, "given time interval" was construed as "fixed at a few seconds or less," although the patents merely describe that the time intervals are preferably lower-bound time intervals. The term "marking implement" was construed as "an implement that has a marker tip (and not a pen tip)," although the specification interchangeably refers to the "marking implement" as a marker or a pen. The term "temporary attachment" was construed as "an element that can be removed from the device's retrofittable apparatus." However, claim 1 requires that the retrofittable apparatus includes the temporary attachment and as such, cannot be removed. The attachment is temporary not because it can be removed from a sensor array, but because it is for removably affixing the sensor array to the board.

The Federal Circuit also reversed the district court's finding of noninfringement for a fifth term "intermittent" ultrasound signals. Because the alleged infringer's product used "continuous" ultrasound, the district court found that it was not equivalent and granted summary judgment of noninfringement. However, the Federal Circuit stated that the lower court "shortcut" the analysis and should have determined whether a reasonable jury could believe that the use of ultrasound was equivalent.