

TREBRO MANUFACTURING, INC. v. FIREFLY EQUIPMENT, LLC, Appeal No. 2013-1437 (Fed. Cir. April 9, 2014). Before Rader, Lourie, and Prost. Appealed from D. Mont. (Judge Haddon).

Background:

Trebro sued Firefly for infringement of a patent directed to sod harvesters, and Trebro moved for a preliminary injunction. The district court denied the preliminary injunction based on a finding of no likelihood of success on the merits, a substantial question of validity, and no irreparable harm. Trebro appealed.

Issue/Holding:

Did the district court abuse its discretion in denying the preliminary injunction? Yes, reversed and remanded.

Discussion:

A party seeking a preliminary injunction must establish: (i) a likelihood of success on the merits, (ii) a likelihood of irreparable harm in the absence of preliminary relief, (iii) the balance of equities tips in the party's favor, and (iv) the injunction is in the public interest. *See Winter*. An accused infringer's demonstration of a substantial question of validity defeats a showing of a likelihood of success on the merits. *See Aria Diagnostics*.

The Federal Circuit held that the district court erred in its finding of no likelihood of success on the merits based on the district court's claim construction. In particular, the Federal Circuit found that the district court improperly imported claim limitations from a feature discussed in a preferred embodiment. The Federal Circuit based this finding on the fact that the description does not limit the invention to require this feature and a dependent claim explicitly limited the claimed invention to include this feature.

The Federal Circuit further held that the district court erred in its determination of a substantial question of validity because an alleged public sale relied upon by the district court occurred after the priority date of Trebro's patent. Indeed, the Federal Circuit found that no single prior art reference raises a question to the validity of Trebro's patent.

Additionally, the Federal Circuit found that the district court erred in its finding of no irreparable harm. Specifically, the Federal Circuit found that Trebro is likely to lose customers and an irrecoverable market share, and the Federal Circuit found that, because Trebro and FireFly are direct competitors, the fact that Trebro does not practice the patent does not cut against a finding of irreparable harm. Thus, the Federal Circuit opined that the record demonstrates a strong probability of irreparable harm.

Accordingly, the Federal Circuit vacated the district court's order and remanded the case to the district court to consider the final two requirements for a preliminary injunction.