

MEDISIM LTD. v. BESTMED, LLC, Appeal No. 2013-1451 (Fed. Cir. July 14, 2014). Before Prost, Taranto, and Chen. Appealed from S.D.N.Y. (Judge Scheindlin).

Background:

Medisim filed suit against BestMed, accusing BestMed of infringing the claims of its patent. Before the case was sent to the jury, both parties made motions requesting JMOL under FRCP Rule 50(a). In opposing Medisim's motion for JMOL of no anticipation, BestMed's counsel argued that anticipation was a question for the jury. BestMed in turn moved for JMOL of no unjust enrichment for lack of evidence. All JMOL motions were denied. The jury awarded Medisim \$1.2 million in patent infringement damages and \$2.29 million in damages for its unjust enrichment claim.

Following the jury verdict, BestMed moved for JMOL of anticipation and no unjust enrichment under FRCP Rule 50(b). The district court granted these motions, thereby overturning the verdict and finding that the claims of Medisim's patent were anticipated by its own product. The district court also granted BestMed a new trial on anticipation if an appellate court determined that BestMed failed to preserve its right to bring a post-trial motion for JMOL. Medisim appealed.

Issues/Holdings:

Did the district court err in holding that BestMed had preserved its right to bring post-trial motions for JMOL under Rule 50(b)? Did the district court err in awarding BestMed a new trial on anticipation? Affirmed-in-part, vacated-in-part, and remanded.

Discussion:

The Federal Circuit began its analysis by confirming the general rule that parties who fail to move under Rule 50(a) before a case is sent to a jury forfeit the right to renew such a challenge under Rule 50(b) after the jury verdict. Applying this rule to the facts at hand, the Federal Circuit held that BestMed forfeited its right to move for JMOL on anticipation under Rule 50(b). BestMed never moved on its own for JMOL on anticipation before the case was submitted to the jury, and in reply to Medisim's motion, in fact argued that anticipation was a question for the jury. But the Federal Circuit held that BestMed did not forfeit its right to move for JMOL on unjust enrichment under Rule 50(b) because it had adequately made such a motion under Rule 50(a). At the close of Medisim's case-in-chief, BestMed had moved for JMOL, arguing that "there is no evidence of unjust enrichment" and particularly challenging each element of the claim. The Federal Circuit held that this was sufficient, and in view of the lack of evidence of unjust enrichment, affirmed the district court's grant of JMOL on this issue.

Finally, the Federal Circuit confirmed that a court may set aside a jury verdict and order a new trial even if no motion was made for JMOL under Rule 50(a). In the Second Circuit, a motion for new trial should not be granted unless the trial court is convinced that the jury has reached a seriously erroneous result or that the verdict is a miscarriage of justice. Medisim argued that the district court had not provided any legal or evidentiary grounds to support its conditional grant of a new trial. But the Federal Circuit disagreed, holding that the district court's discussion of the "overwhelmingly strong" evidence in support of anticipation was sufficient to grant a new trial. The Federal Circuit thus also affirmed this decision of the district court.