

EMD MILLIPORE CORPORATION v. ALLPURE TECHNOLOGIES, INC., Appeal No. 2014-1140 (Fed. Cir. September 29, 2014). Before Prost, O'Malley and Hughes. Appealed from D. Mass. (Judge Woodlock).

### Background:

Millipore owns the '543 patent directed to a device for transferring a sample fluid to and from a container without contaminating the fluid. The '543 patent claims, *inter alia*, "at least one removable, replaceable transfer member . . . said transfer member comprising a holder [and] a seal for sealing [an] aperture . . ." Millipore sued AllPure in the district court of Massachusetts for allegedly infringing its '543 patent. The district court found that AllPure's accused TAKEONE device neither literally contains the claimed removable, replaceable transfer member, nor does it provide an infringing equivalent. Thus, the district court granted summary judgment of non-infringement in favor of AllPure. Millipore appealed.

### Issues/Holdings:

Did the district court err when it construed the claimed removable, replaceable transfer member as *not* including a part that is disassembled? No, affirmed. Did the district court err in finding that prosecution history estoppel barred Millipore's equivalents argument? No, affirmed.

### Discussion:

First, the Federal Circuit noted that the district court construed "at least one removable, replaceable transfer member" to mean "at least one transfer member that can be *removed* from the magazine part of the device and replaced with at least one removable, replaceable transfer member." The Federal Circuit also noted the district court's explanation that "removed" means to "take off" or "put apart," and that these meanings are significantly different than "take apart," or "disassemble."

On appeal, Millipore argued that summary judgment was inappropriate because disassembly of the transfer member could qualify as "removal" of the transfer member, noting that when the accused TAKEONE device is disassembled, all components of the accused transfer member are *removed* from the magazine part. The Federal Circuit disagreed. It found that in order for the accused TAKEONE device to be "removable," it must be disassembled. However, when the TAKEONE device is disassembled, a seal no longer exists because the required components are no longer connected. Because Millipore's claim requires a seal that is part of the transfer member, and because this seal no longer exists once the transfer member is removed, the accused device does not have the claimed "at least one removable, replaceable transfer member."

Next, the Federal Circuit addressed Millipore's arguments that the accused device infringed under the doctrine of equivalents. The Federal Circuit noted that prosecution history estoppel applies when an applicant narrows a claim during prosecution to avoid the prior art or to address a concern that would otherwise render the claimed subject matter unpatentable. The Federal Circuit then found that during prosecution of the '543 patent, the applicant amended the claim to further define the seal, and stated that the purpose of the amendment was to make the claim "allowable and distinguishable over the cited references." The Federal Circuit found that by adding the seal to distinguish over the references, the applicant narrowed the seal, and in turn, narrowed the transfer member limitation. Thus, the Federal Circuit held that the accused device also does not infringe the '543 patent under the doctrine of equivalents.