

REMBRANDT VISION TECHS., L.P. v. JOHNSON & JOHNSON VISION CARE, INC.,
Appeal No. 2015-1079 (Fed. Cir. April 7, 2016). Before Dyk, Moore, and Stoll. Appealed from
M.D. Fla. (Judge Corrigan).

Background:

Rembrandt sued Johnson & Johnson Vision Care ("JJVC") alleging that its contact lenses infringed a claim of its patent. At trial, the parties disputed whether JJVC's accused lenses met the "surface layer" and "soft" limitations of the asserted claim. Rembrandt relied on expert (Dr. Beebe) testimony that was ultimately stricken because the expert drastically changed his testimony between direct and cross examination. Because Dr. Beebe's stricken testimony was the only evidence that Rembrandt advanced to prove the accused lenses were "soft," the district court granted JMOL that JJVC did not infringe.

JJVC relied on expert testimony from Dr. Bielawski to support its position that its accused lenses did not meet the "surface layer" limitation, and to impugn Dr. Beebe's credibility. After trial, it was discovered that Dr. Bielawski testified falsely during trial. Dr. Bielawski also withheld data from tests conducted on third-party contact lenses, previously found to infringe the asserted claim, which JJVC had provided him. In light of the post-trial discovery, Rembrandt moved for a new trial, which the district court denied. Rembrandt appealed.

Issue/Holding:

Did the district court abuse its discretion in denying Rembrandt's motion for a new trial under Rule 60(b)(3)? Yes, reversed and remanded for a new trial.

Discussion:

To prevail on a motion under Rule 60(b)(3) in the Eleventh Circuit, the movant must establish that: (1) the adverse party engaged in fraud or other misconduct; and (2) this conduct prevented the moving party from fully and fairly presenting its case. The majority stated that Dr. Bielawski's false testimony and the withholding of relevant documents could have impacted the district court's decision to exclude Dr. Beebe's testimony and consequently grant JMOL on the "soft" limitation, and thus, considering the lack of credibility of the experts, Rembrandt could not have had a full and fair trial on the "soft" limitation. The majority also held that the district court erred by summarily dismissing Rembrandt's allegations of misconduct and by requiring proof that JJVC or its counsel was complicit in Dr. Bielawski's false testimony. The majority stated that, as used in Rule 60(b)(3), misconduct does not demand proof of intent or purpose as a prerequisite to redress, and the term can cover even accidental omissions. Although JJVC may have been unaware of Dr. Bielawski's false testimony, JJVC should have known that additional tests were conducted and additional documents were generated.

Judge Dyk dissented, stating that the district court's grant of JMOL was based on the "soft" limitation only, and the district court did not rely on Dr. Bielawski's testimony in granting JMOL as it was directed to only the "surface layer" limitation. Judge Dyk also stated that the text of Rule 60(b)(3) requires evidence that the misconduct was attributable to the opposing party. Instead, Judge Dyk argued that the district court did not resolve whether JJVC's counsel should have known that additional evidence existed, and thus, at best, a remand for further fact-finding would have been appropriate as to whether JJVC's counsel should have known about the documents.