

AKZO NOBEL COATINGS, INC. v. DOW CHEMICAL COMPANY, Appeal No. 2015-1331, 2015-1389 (Fed. Cir. January 29, 2016) (Lourie, Reyna and Chen). Appealed from D. Del. (Judge Stark).

### Background:

Akzo brought suit against Dow asserting that Dow's Bluewave process infringes Akzo's patent under either literal infringement or under the doctrine of equivalents. Akzo's patent is directed to an extrusion process that generates low viscosity aqueous polymer dispersions. Dow filed a motion for summary judgment of noninfringement asserting that Akzo failed to show that a reasonable juror could conclude that Dow's Bluewave process uses "a pressurized collection vessel," as claimed in Akzo's patent.

The district court construed "a pressurized collection vessel" as meaning "tubing, piping, or other container, where a desired material accumulates." The district court reasoned that the term "collection" means "some amount of material must be permitted to accumulate within the vessel, rather than all of the material flowing through the vessel at a constant rate." The district court found that Dow's Bluewave process uses a valve and allows a polymer dispersion to flow continuously out of the valve and through a series of pipes and heat exchangers. Thus, the district court granted the motion for summary judgment of noninfringement.

### Issue/Holding:

Did the district court err in construing "a pressurized collection vessel" as requiring accumulation of a material? - No, affirmed.

### Discussion:

The Federal Circuit held that the district court properly construed "a pressurized collection vessel" as requiring accumulation of material because the claim construction was supported by the claim language and the specification. Akzo argued that the district court construed the claim term too narrowly, and that "a pressurized collection vessel" should have been given its ordinary and customary meaning of a pressurized vessel that "gathers or receives." The Federal Circuit disagreed with Akzo, and held that Akzo's proposed claim construction would obviate the use of the term "collection." The panel felt that allowing "collection" to mean "receive" would render the term superfluous and would allow for any pressurized vessel to be a "pressurized collection vessel." Thus, the Federal Circuit held that Dow's Bluewave process did not raise a genuine issue of material fact as to literal infringement of Akzo's patent.

The Federal Circuit also held that Dow's Bluewave process did not raise a genuine issue of material fact as to infringement of Akzo's patent under the doctrine of equivalents. Akzo argued that Dow's Bluewave process performs the same function, in substantially the same way to achieve the same result. The Federal Circuit disagreed with Akzo, and held that such an infringement theory under doctrine of equivalents would vitiate the claimed pressurized collection vessel. The Federal Circuit held that Akzo's claim requires an accumulation of dispersion in the collection vessel to generate backpressure, whereas Dow's Bluewave process uses a valve and does not allow for accumulation in the pipes. Thus, Federal Circuit reasoned that without sufficient evidence to the contrary, interpreting Dow's Bluewave process using valves and pipes as generating backpressure in substantially the same way as Akzo's pressurized collection vessel would vitiate the claim limitation.