

INTERCONTINENTAL GREAT BRANDS LLC v. KELLOGG NORTH AMERICA COMPANY, Appeal Nos. 2015-2082, -2084 (Fed. Cir. September 7, 2017). Before Prost, Reyna, and Taranto. Appealed from N.D. Ill. (Judge Kennelly).

Background:

Plaintiff owns a patent directed to a food package that, after opening, can be resealed to maintain the freshness of the food items inside. Plaintiff sued Defendant for infringement of a number of claims of the patent alleging that Defendant infringed by making, using, selling, and offering certain cookies in resealable packages. Defendant moved for summary judgment of invalidity alleging that the asserted claims were invalid for obviousness.

The district court held that Defendant was entitled to summary judgment of invalidity for obviousness, concluding that this is a case in which the strong evidence of secondary considerations (i.e., commercial success tied to the patent-claimed packaging, industry praise, and copying by Defendant) do not overcome the extremely strong prima facie showing that the asserted claims were obvious in light of the applied references (i.e., the prior art references taught all of the claim limitations—nearly all of the elements were found in one reference, and the rest already existed in cookie packages; and given the known problems in the cookie packaging industry and that the technology is relatively simple, no reasonable jury could conclude that a person skilled in packaging design would not have been motivated to combine the features as claimed). Plaintiff appealed.

Issue/Holding:

Did the district court err in determining that summary judgment of invalidity for obviousness was warranted? No, affirmed.

Discussion:

In affirming the district court's grant of summary judgment of obviousness, the Federal Circuit concluded that the undisputed facts in this case—including the state of the prior art, the simplicity and availability of the components making up the claimed invention, and the known problem in the cookie packaging industry (i.e., the absence of a satisfactory resealable package was a known problem for cookies)—compel a conclusion of obviousness.

In reaching this conclusion, the Federal Circuit determined that (i) there was no error in the sequence of steps the district court took in arriving at its ultimate obviousness determination (Plaintiff contended that the district court improperly treated the objective indicia as an "afterthought," "writing off the patent before turning to objective indicia"), (ii) the district court's findings, in this case, suffice to justify the overall legal conclusion of obviousness, there being no meaningful argument that the objective indicia, when weighed in Plaintiff's favor, can change the ultimate conclusion, and (iii) the showing of obviousness was sufficiently strong that no PTO contrary determination (i.e., relating to how the invalidity argument relied on the same prior art considered during a reexamination proceeding of the claims at issue) could alter the conclusion about summary judgment.