

LIBERTY AMMUNITION, INC. v. UNITED STATES, Appeal Nos. 2015-5057, -5061 (Fed. Cir. August 26, 2016). Before Prost, Newman and Stoll. Appealed from Court of Federal Claims (Judge Lettow).

Background:

Plaintiff owns a patent directed to "green" ammunition rounds. Plaintiff sued Defendant alleging that the Army's use of various ammunition rounds practiced claims of Plaintiff's patent without a license in violation of 28 U.S.C. §1498.

The trial court conducted a Markman hearing and issued a claim construction order construing various disputed claim terms. Relevant here, the claims recited an "interface portion disposed and dimensioned to define a reduced area of contact of said body with the rifling of the firearm." The trial court noted that there were no clues within the claims as to what the area of contact has been "reduced" from, but found that the specification saves the term "reduced area of contact" from indefiniteness in that the Background of the Invention section discloses that the patent's proposed projectile has "a reduced contact area as compared to conventional projectiles." While the specification only specifically mentioned a single round (NATO 5.56 mm M855(SS109) round), the trial court construed the term "reduced area of contact" to mean "the area of contact between the interface and the rifling of the firearm is less than that of a traditional jacketed lead bullet of calibers .17 through .50 BMG." After holding a bench trial, the trial court issued an opinion finding that the Defendant practiced multiple claims of Plaintiff's valid patent and it entered a damages award in Plaintiff's favor. Defendant appealed.

Issues/Holdings:

Did the trial court err in finding that Defendant practiced the claims of Plaintiff's patent and entering a damages award in Plaintiff's favor? Yes, reversed and vacated.

Discussion:

The Federal Circuit determined that the trial court's claim construction was incorrect because it does not properly capture the specification's discussion of conventional projectiles. The Federal Circuit found that given its reference in the specification, the M855 round is the proper point of comparison/baseline for the claim limitation "reduced area of contact," at least for 5.56 mm projectiles. In other words, the Federal Circuit indicated that one of skill in the art would appreciate the M855 round as the standard for determining whether a 5.56 mm projectile's area of contact has been reduced, as required by the claim limitation. It was undisputed that the accused projectiles have an increased contact area when compared to the M855 round and thus the Federal Circuit held Defendant does not practice any of the asserted claims.

The Federal Circuit also noted that the claims at issue would not have been definite had the trial court's construction been correct because there would not be a sufficient objective boundary around the term of degree "reduced area of contact." In this regard, a multitude of candidates for the conventional baseline projectile would remain for each caliber within that range, making the claim indefinite under *Interval*.