HOMELAND HOUSEWARES, LLC v. WHIRLPOOL CORPORATION, Appeal No. 2016-1511 (Fed. Cir. August 4, 2017). Before Prost, Newman, and Dyk. Appealed from PTAB.

Background:

Whirlpool holds a patent related to household blenders. The representative claim is directed to a cycle of operation for a blender in which the rotational speed of the blender's cutter is automatically moved between (i) a constant speed phase at a predetermined operating speed, (ii) a deceleration phase in which the speed is reduced to a predetermined settling speed, and (iii) an acceleration phase in which the speed is increased again to the operating speed. Homeland petitioned the Board for *inter partes* review of Whirlpool's claims based on a theory of anticipation in view of a patent to Wulf.

The Board determined Homeland failed to show that Wulf anticipates Whirlpool's representative claim. In particular, the Board held that Wulf did not teach the "predetermined settling speed" limitation of the claim. However, the Board made this finding after declining Homeland's request to construe the "predetermined settling speed" limitation, despite the parties' disagreement as to the claim construction. Homeland thus appealed.

Issue/Holding:

Did the Board err in finding the claims were not anticipated? Yes, reversed.

Discussion:

The main question on appeal was whether, once properly construed, the "predetermined settling speed" limitation was found in the Wulf patent. Whirlpool proposed that the limitation should be construed as requiring empirical testing to establish a settling speed for each blender and each type and amount of food. Homeland proposed a construction requiring any speed less than the operating speed. The Federal Circuit disagreed with both proposals, finding Whirlpool's to be too narrow and Homeland's to be too broad.

The Federal Circuit then conducted its own claim construction of the "predetermined settling speed" limitation and found, based on the ordinary and plain meaning of the terms, that this phrase requires "a speed that is slower than the operating speed and permits settling of the blender contents." Looking to Wulf, the Federal Circuit noted that Wulf's disclosure describes switching a blender between high and low speeds, where the low speed permits the material to "fall back" to the cutting knives of the blender. Surmising that "to fall back" is "to settle," the Federal Circuit determined that Wulf essentially teaches the claimed predetermined settling speed. The remaining limitations of the claim were found in an embodiment disclosed by Wulf for blending powdered drinks. The Federal Circuit thus found the claim to be anticipated and reversed the Board's decision.