

PHIL-INSUL CORP. v. AIRLITE PLASTICS CO., Appeal No. 2016-1982 (Fed. Cir. April 17, 2017). Before O'Malley, Bryson and Wallach. Appealed from D. Neb. (Judge Bataillon).

Background:

Phil-Insul Corp ("IntegraSpec") owns a patent directed to insulating concrete forms. IntegraSpec asserted infringement in a first proceeding against a different defendant, and a claim construction hearing was held to construe two terms. Upon the construction of the two terms, the district court found the defendant did not infringe the asserted claims, which included claims 1 and 19 as independent claims. IntegraSpec appealed the district court's decision, challenging only the claim construction. The Federal Circuit summarily affirmed the district court's judgment under FRCP Rule 36.

IntegraSpec filed suit against Airlite while the first proceeding was pending. IntegraSpec alleged that claim 2 was infringed. After the disposition of the reexamination and first proceeding, Airlite moved for summary judgment of noninfringement based on collateral estoppel, arguing that their products are not infringing for the same reasons that were litigated in the first proceeding. IntegraSpec argued that in the first proceeding, (1) they did not have a full and fair opportunity to litigate the issues being raised, particularly because claim 2 was now being asserted and not claim 1, (2) the district court's claim construction was incorrect, and (3) the claim construction was not essential to the noninfringement ruling. The district court granted summary judgment of noninfringement to Airlite.

Issue/Holding:

Did the district court err in granting summary judgment to Airlite based upon collateral estoppel? No, affirmed.

Discussion:

IntegraSpec argued on appeal that the district court erred in giving collateral estoppel effect to a Rule 36 judgment, and failed to construe claim 2, which is the basis of the instant infringement suit.

In affirming that it was proper to give collateral estoppel effect to a Rule 36 judgment, the Federal Circuit confirmed that a summary affirmance is a valid and final judgment, and the appeal received full consideration of the court. While extending no further than the issues decided in the action, the summary affirmance was sufficient in that it necessarily adopted the district court's claim constructions, which was the issue to be precluded. The court indicated that there is not a categorical ban against collateral estoppel stemming from Rule 36 judgments.

Regarding the failure to construe claim 2, the Federal Circuit indicated that the disputed features from the claim construction also applied to claim 2, and thus, the same analysis applies. Accordingly, dismissing the case on the basis of collateral estoppel was found to be proper in this case.