

ZEROCLICK, LLC v. APPLE INC., Appeal No. 2017-1267 (Fed. Cir. June 1, 2018). Before Reyna, Taranto and Hughes. Appealed from N.D. Cal. (Judge Tigar).

Background:

Zeroclick sued Apple, alleging that Apple infringed claims 2 and 52 of U.S. Patent No. 7,818,691 and claim 19 of U.S. Patent No. 8,549,443, which relate to modifications to graphical user interfaces of devices. Apple defended on grounds that the asserted claims were indefinite, and thus, invalid. The relevant language of claims 2 and 52 of the '691 patent includes "program that can operate the movement of the pointer." The district court identified "program" as a means for performing the function of operating the movement pointer. The relevant claim language for claim 19 of the '443 patent includes "user interface code being configured to detect one or more locations touched by a movement of the user's finger on the screen without requiring the exertion of pressure and determine therefrom a selected operation," where the district court identified "user interface code" as a means for performing functions of detecting locations touched by a movement of the user's finger on a screen, and determining a selected operation therefrom.

Based on these interpretations, the district court held that the claims recited means-plus-function terms, thereby invoking 35 U.S.C. §112, sixth paragraph, and were indefinite because the specification did not recite sufficient structure for performing the claimed functions. Thus, the district court agreed with Apple's assertions of invalidity. Zeroclick appealed.

Issue/Holding:

Did the district court err in construing the relevant claim terms as means-plus-function limitations? Yes, vacated and remanded.

Discussion:

The Federal Circuit cited *Williamson v. Citrix Online, LLC* for the following principles:

- (i) The absence of the term "means" in a claim limitation creates a rebuttable presumption that 35 U.S.C. §112, sixth paragraph does not apply.
- (ii) The presumption can be overcome "if the challenger demonstrates that the claim term fails to recite sufficiently definite structure or else recites function without reciting sufficient structure for performing that function."
- (iii) The essential inquiry in determining whether a claim limitation invokes §112, sixth paragraph is "whether the words of the claim are understood by persons of ordinary skill in the art to have a sufficiently definite meaning as the name for structure."

In considering these principles, the Federal Circuit found that the absence of the term "means" from the relevant claim limitations created a rebuttable presumption that the claims are not mean-plus-function limitations. The Federal Circuit also found that Apple failed to rebut the presumption because it did not provide any evidence to support its position that the limitations must be construed as means-plus-function limitations. Thus, the Federal Circuit found that the district court erred by failing to consider the un rebutted presumption, and by failing to undertake the essential inquiry and make related factual findings. Accordingly, the Federal Circuit vacated the district court's judgment and remanded for further proceedings.