POLARA ENGINEERING INC. v. CAMPBELL CO., Appeal Nos. 2017-1974, -2033 (Fed. Cir. Jul. 10, 2018). Before Lourie, Dyk, and Hughes. Appealed from C.D. Cal. (Judge McCormick).

Background:

Polara owns U.S. Patent No. 7,145,476 (the '476 Patent), which is directed to a two-wire control system for push-button crosswalk stations that are used with traffic light controlled intersections. The patented system allows both sighted and visually impaired pedestrians to receive information regarding the status of the intersection to be crossed. For example, the system provides vibro-tactile messages to alert the pedestrians when to cross the intersection.

Polara filed the application that led to the '476 Patent on August 5, 2004. Thus, the critical date for pre-AIA §102 purposes is August 5, 2003.

Prior to this critical date, Polara tested prototypes of its system. The first prototype was installed in the city of Fullerton at the intersection of Gilbert Street and Commonwealth Avenue. The second prototype was installed in the city of Fullerton at the intersection of Nutwood Avenue and College Boulevard. This second intersection is larger than the first intersection and has a different configuration.

Polara did not enter into a confidentiality agreement with the city of Fullerton. However, Polara did not inform the city as to how the prototypes worked, and Polara's employees installed, uninstalled, and performed all testing of the prototypes. Furthermore, a person could not determine how the prototypes worked once they were installed merely by looking at the prototypes.

In 2013, Polara filed suit against Campbell alleging infringement of the '476 Patent. The district court ruled that Campbell's system infringes the '476 Patent. Campbell unsuccessfully argued that the asserted claims in the '476 Patent are invalid due to prior public use.

Issue/Holding:

Did the district court err by finding that the asserted claims of the '476 Patent are not invalid under the public use bar? No, affirmed-in-part, vacated-in-part, and remanded.

Discussion:

The public use bar is triggered "where, before the critical date, the invention is in public use and ready for patenting." *Invitrogen Corp. v, Biocrest MFG., L.P*. However, an inventor may perfect his discovery by conducting extensive testing without losing his right to obtain a patent, even if such testing occurs in the public eye. *Pfaff v. Wells Elecs., Inc.*

The Federal Circuit found that Polara's first and second prototypes did not trigger the public use bar. They found that it was reasonable for Polara to test the claimed invention at actual crosswalks of different sizes and configurations where the prototypes would experience different weather conditions and different traffic patterns. Such testing would help ensure that the invention would work for its intended purpose. The Federal Circuit also found that such testing is important because Polara's invention is "a life safety device."

Although Polara did not enter into a confidentiality agreement with the city of Fullerton, the Federal Circuit found that Polara still maintained the secrecy of the invention.