

EKO BRANDS, LLC v. ADRIAN RIVERA MAYNEZ ENTERPRISES, INC., Appeals Nos. 2018-2215 and 2018-2254 (Fed. Cir. January 13, 2020). Before Dyk, Reyna, and Hughes. Appealed from W.D. Wash. (Judge Donohue).

Background:

Adrian Rivera Maynez ("ARM") sued Eko at the International Trade Commission ("ITC"), alleging infringement of the claims of an ARM patent directed to an adaptor device for use with Keurig single-brew coffee machines. In earlier proceedings involving other respondents, the ITC found all but two claims of that patent invalid for lack of written description. Eko defaulted with respect to these surviving claims, and the ITC issued a limited exclusion order and a cease-and-desist order.

Eko then filed an action in the Western District of Washington, seeking declaratory judgment as to invalidity of those claims on obviousness grounds. ARM counterclaimed for infringement. Although it granted summary judgment of non-infringement, the district court denied Eko's motion for summary judgment as to obviousness, finding that there remained disputed issues of material fact. At trial, the jury found the two claims obvious, and the district court awarded Eko attorney's fees. ARM appealed to the Federal Circuit.

Issue/Holding:

Did the district court err in finding the claims obvious and awarding attorney's fees? No, affirmed.

Discussion:

To support its non-obviousness contention, ARM argued that the district court erred in rejecting its proposed interpretation of the two claims. The Federal Circuit rejected this argument, finding that ARM's proposed interpretation would exclude one of the disclosed "preferred embodiments" and that, absent "highly persuasive evidentiary support," such a construction is invalid. ARM also argued that the award of attorney's fees was incorrect because, as the Federal Circuit had previously held, "[a]bsent misrepresentations to the court, a party is entitled to rely on a court's denial of summary judgment . . . as an indication that the party's claims were objectively reasonable and suitable for resolution at trial." *Checkpoint Systems, Inc. v. All-Tag Security*, 858 F.3d 1371, 1376 (Fed. Cir. 2017). The Federal Circuit rejected this argument, stating that *Checkpoint* merely requires a court to consider denial of summary judgment, not to give that denial decisive weight.

The Federal Circuit held that this case was exceptional notwithstanding the denial of summary judgment. For instance, at a pre-trial conference, ARM offered no explanation for its non-obviousness position beyond asserting that the ITC's limited exclusion and cease-and-desist order remained valid and that ARM was not willing to "write that off." ARM also "did not bother to try to show secondary factors of non-obviousness," which led the district court to remark that "ARM's insistence on trying [the issue of obviousness] was largely a charade used for the purpose of extending the life of the earlier ITC . . . order." The Federal Circuit thus affirmed the award of attorney's fees.