

NEVILLE v. FOUNDATION CONSTRUCTORS, INC., Appeal No. 2020-1132 (Fed. Cir. August 27, 2020). Before Lourie, O'Malley and Chen. Appealed from C.D. Cal. (Judge Guilford).

Background:

Patentee Neville and others (hereinafter referred to as "Substructure") sued Foundation for infringement of claims of two patents. The claims were directed to foundation piles, which are structures placed into the ground to provide stability for foundations that are built over them.

At issue was the term "end plate," which was described by the Substructure patents to be a bottom surface of a pile tip of the foundation pile which will cap off the end of the conical body of the pile tip, and close it from the soil in which it is to be placed. Figure 1 of one of Substructure's patents depicts a pile tip 10 with an end plate 19.

One of the patents claimed the end plate as having a substantially flat surface disposed perpendicular to the centerline of the tubular pile. The other patent claimed a protrusion extending outwardly from the end plate.

The district court granted summary judgment of noninfringement, disagreeing with Substructure's argument that a somewhat arbitrarily provided horizontal slice of the accused pile tip would correspond to an end plate.

Issue/Holding:

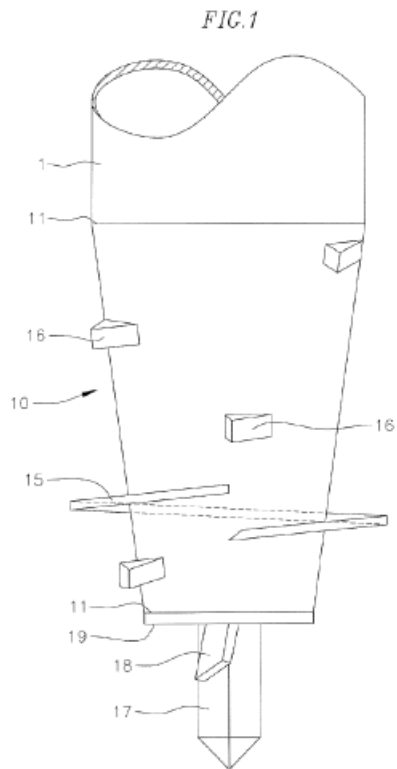
Did the district court err in granting summary judgment of noninfringement of Substructure's two patents? No, affirmed.

Discussion:

The Federal Circuit agreed with the district court's construction of the term "end plate" and the consequent noninfringement finding, explaining that Substructure's claimed "end plate" should be at an end of the pile tip, should include an external surface of the pile tip, and should not be a fully interior portion of the pile tip. The Federal Circuit commented that the specification is silent as to any interior surface of the end plate, and there is no suggestion that any interior surface of the end plate would serve any purpose. The Federal Circuit disagreed with Substructure's allegation that the specification suggests that an end plate with its flat surface could be fully interior to another portion of the pile tip, finding that if the pile tip was cast as a single unit, as suggested in the specification, this reinforces the notion that the claimed end plate needs to be exterior facing. Otherwise, Substructure would be asserting infringement based upon an imaginary slice of a solid cast "single unit" pile tip.

The Federal Circuit also pointed to the prosecution history, finding Substructure's inclusion of the end plate limitation during prosecution to overcome prior art further indicative of the claim construction afforded by the district court.

The Federal Circuit also found the "protrusion" limitation not to be infringed for similar reasons, given that the alleged end plate of Foundation's product was a single conical piece and it was unclear where an end plate would end and a protrusion would begin.



*Substructure's Figure 1*



*Alleged infringing product with "end plate" construction*