

PAVO SOLUTIONS v. KINGSTON TECHNOLOGY CO., Appeal No. 2021-1834 (Fed. Cir. June 3, 2022). Before Prost, Lourie, and Chen. Appealed from C.D. Cal. (Judge Staton).

### Background:

The patent in suit is directed to a flash memory main body with a hinge protuberance, and a rotating cover that pivots about the hinge protuberance in order to protect the terminal connection part of the flash memory drive from damage and external substances.

Claim 1 recites "*a flash memory main body including a rectangular shaped case . . . , and a hinge protuberance formed on at least one side of the case; and a cover including a pair of parallel plate members facing each other and spaced by an interval corresponding to the thickness of the case, . . . ; the parallel plate members having at least one hinge hole receiving the hinge protuberance on the case for pivoting the case with respect to the flash memory main body, whereby the USB terminal piece is received in an inner space of the cover or exposed outside the cover.*"

The district court held that the phrase "for pivoting the case with respect to the flash memory main body" included an obvious typographical error, and judicially corrected the language to recite "for pivoting the ~~case~~ cover with respect to the flash memory main body."

### Issue/Holding:

Did the district court properly construe and correct claim 1 by replacing "case" with "cover"? Yes, affirmed.

### Discussion:

A district court may correct "obvious minor typographical and clerical errors in patents." Correction is appropriate "only if (1) the correction is not subject to reasonable debate based on consideration of the claim language and the specification and (2) the prosecution history does not suggest a different interpretation of the claims."

At trial, the district court properly corrected an "obvious minor typographical error" in claim 1. The claim refers to a flash memory main body including a case, and a cover. From Figure 2, it is clear that the cover pivots with respect to the case. The case does not rotate with respect to the flash memory main body, because the case is part of the flash memory main body. Therefore, even though the claim literally refers to the case pivoting with respect to the flash memory main body, this reference is clearly a minor typographical error and the district court properly corrected the error.

The specification and prosecution history also supported the district court's correction, which further confirmed that the correction of the claim was proper.

Finally, the defendant Kingston argued that it could not have willfully infringed the claims, because it could not have anticipated that a court would later correct the claims. The Federal Circuit held that "reliance on an obvious minor clerical error in the claim language is not a defense to willful infringement."

**Exemplary Figure of Patent in Suit: flash memory main body (top portion) and pivoting cover (bottom portion)**

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KINGSTON TECHNOLOGY COMPANY, INC.

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[FIG. 2]

