

SSI TECHNOLOGIES, LLC v. DONGGUAN ZHENGYANG ELECTRONIC MECHANICAL LTD., Appeal Nos. 2021-2345, 2022-1039 (Fed. Cir. February 13, 2023).
Before Reyna, Bryson, and Cunningham. Appealed from W.D. Wis. (Judge Peterson).

Background:

SSI sued DZEM for infringement of its patents related to sensors for determining the characteristics of fluid in a fuel tank. One of the patents at issue included a claim that recited a filter feature. The district court adopted DZEM's proposed claim construction, and granted summary judgment of non-infringement to DZEM on that grounds that its accused product was not "porous" and therefore did not contain a filter as claimed. SSI appealed.

Issue/Holding:

Did the district court err in granting summary judgment of non-infringement to DZEM? Yes, vacated and remanded.

Discussion:

The claim recited "a filter covering the sensing area, the filter configured to allow a liquid portion of the fluid to enter the sensing area, and substantially prohibit one or more gas bubbles of the fluid from entering the sensing area." DZEM's accused sensors included a rubber cover having four small openings on its underside, each measuring approximately 2 mm by 10 mm.

The district court adopted DZEM's proposed construction of "filter" construing the term to mean a porous structure defining openings, and configured to remove impurities larger than the openings from a liquid or gas passing through the structure. The district court characterized the openings in DZEM's rubber cover as "relatively large" and the apertures disclosed in the patent as "tiny." The district court referred to the discussion in the specification regarding filters that indicated that the effective aperture size is tiny—100 microns. The district court found that DZEM's cover does not exclude bubbles by straining fluid through a porous surface and held that DZEM did not infringe the claim because the rubber cover was not "porous."

The Federal Circuit disagreed with the district court's findings objecting to its application of DZEM's construction. The Federal Circuit recognized that each embodiment in the specification used a mesh filter, but did not interpret the specification as requiring any specific size of the openings. It held that the openings in the DZEM cover need only perform the claimed function, *i.e.*, to substantially prohibit one or more gas bubbles of the fluid from entering the sensing area. The Federal Circuit stated "as long as the openings in the filter are small enough to prevent at least some gas bubbles from entering the sensing area, the openings need not be smaller than any particular maximum size."

Therefore, the Federal Circuit vacated and remanded on this issue.