

NCS MULTISTAGE INC. v. NINE ENERGY SERVICE, INC., Appeal No. 2025-1000 (Fed. Cir. September 14, 2026). Before Reyna, Hughes, and Cunningham. Appealed from W.D. Tex. (Judge Albright).

Background:

NCS owns a patent relating to a tool that assists with inserting a casing string to the bottom of a wellbore. The patent's priority date is February 5, 2013. The claims require a rupture disc in sealing engagement with a region of a tubular member that "has a larger internal diameter than the internal diameter of the casing string and is parallel to the internal diameter of the casing string." Before the priority date, in July 2012, NCS made its first sale of the AirLock device to Tundra. In August 2012, TCO (a third party) sold a TDP-PO tool to Apache, and Apache used the TDP-PO tool in well operation by January 2013.

NCS sued Nine for infringement. The district court construed "internal diameter" as "both an inner surface and a measured diameter," and "casing string" as "pipe that is customarily ≥ 4.5 inches in outer diameter." At trial, Nine argued that the TDP-PO tool was prior art. NCS counterargued that its Tundra sale was a public disclosure that removed TCO's sale as prior art under 35 U.S.C. § 102(b)(1)(B), and that the TDP-PO tool was a tubing tool, not a casing tool. The jury found infringement and no invalidity, and the district court denied Nine's renewed motion for judgment as a matter of law. Nine appealed.

Issues/Holdings:

(1) Did the district court err in denying judgment as a matter of law that TCO's sale of the TDP-PO tool to Apache could not be removed as prior art under the § 102(b)(1)(B) exception? Yes, vacated and remanded.

(2) Did the district court err in construing "casing string" to require a size of customarily ≥ 4.5 inches? Yes, vacated and remanded.

Discussion:

Regarding the Apache sale, under § 102(b)(1)(B), a third party's disclosure is not prior art if the inventor had already "publicly disclosed" the same subject matter. NCS argued that its July 2012 sale of the AirLock to Tundra was such a public disclosure, so TCO's later sale to Apache did not count as prior art. The Federal Circuit disagreed, relying on *Sanho Corp. v. Kaijet Technology International Ltd.* (Fed. Cir. 2024), which issued after the jury verdict. *Sanho* held that a sale is not necessarily a public disclosure; the invention must be made available to the public. Here, the AirLock was privately sold to a single party in a sealed tube that would have to be cut open, and NCS's technical documents were marked confidential. Thus, no reasonable jury could have found a public disclosure, meaning that the exception did not apply and the Apache sale was prior art as a matter of law.

Regarding "casing string," the specification states that 4.5 inches is common but "other dimensions . . . are possible." Thus, the Federal Circuit held that the size limitation construction was improper. Because of this error and the Apache holding, the Federal Circuit vacated the judgment of no invalidity and remanded for a new trial.

Separately, the Federal Circuit held that "internal diameter" must have the same meaning throughout the claims, i.e., a measured diameter, and vacated the judgment of infringement for a new trial under that construction.