

## ALERT

## Federal Circuit Patent Bulletin: *GE Lighting Solutions, LLC. v. AgiLight, Inc.*

May 1, 2014

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On May 1, 2014, in *GE Lighting Solutions, LLC. v. AgiLight, Inc.*, the U.S. Court of Appeals for the Federal Circuit (Rader, Moore,\* Reyna) affirmed-in-part, reversed-in-part, and remanded the district court's summary judgment that AgiLight did not infringe U.S. Patents No. 7,160,140, No. 7,520,771, No. 7,832,896, and No. 7,633,055, which related to light-emitting diode (LED) lights. The Federal Circuit stated:

[Regarding the '140 and '771 patents,] the district court incorrectly construed "IDC connector." There is no dispute that the plain meaning of IDC [(insulation displacement connector)] connector is "a connector that displaces insulation surrounding an insulated conductor to make electrical contact with the conductor." Nor is there any dispute that IDC connector is a commonly used term that connotes a range of known devices. Nothing in the intrinsic record requires a departure from this plain and ordinary meaning. AgiLight is certainly correct that claim terms must be construed in light of the specification and prosecution history, and cannot be considered in isolation. However, the specification and prosecution history only compel departure from the plain meaning in two instances: lexicography and disavowal. The standards for finding lexicography and disavowal are exacting. To act as its own lexicographer, a patentee must "clearly set forth a definition of the disputed claim term," and "clearly express an intent to define the term." Similarly, disavowal requires that "the specification [or prosecution history] make[] clear that the invention does not include a particular feature."

There is no lexicography or disavowal here. The specifications and their prosecution histories do not define IDC connector or include any indication that the inventors intended to act as their own lexicographers. Likewise, while the specifications only disclose a single embodiment of an IDC connector in Figure 6, they do not disavow or disclaim the plain meaning of IDC connector or otherwise limit it to that embodiment. A patent that discloses only one embodiment is not necessarily limited to that embodiment. "[I]t is improper to read limitations from a preferred embodiment described in the specification—even if it is the only embodiment—into

the claims absent a clear indication in the intrinsic record that the patentee intended the claims to be so limited.”

There are certainly cases where we have found disavowal or disclaimer based on clear and unmistakable statements by the patentee that limit the claims, such as “the present invention includes . . .” or “the present invention is . . .” or “all embodiments of the present invention are . . .” We have found disclaimer when the specification indicated that for “successful manufacture” a particular step was “require[d].” We have found disclaimer when the specification indicated that the invention operated by “pushing (as opposed to pulling) forces,” and then characterized the “pushing forces” as “an important feature of the present invention.” We also have found disclaimer when the patent repeatedly disparaged an embodiment as “antiquated,” having “inherent inadequacies,” and then detailed the “deficiencies [that] make it difficult” to use. Likewise, we have used disclaimer to limit a claim element to a feature of the preferred embodiment when the specification described that feature as a “very important feature . . . in an aspect of the present invention,” and disparaged alternatives to that feature. Such circumstances are not present in this case. . . . This is simply not a case where the patentee has disavowed the plain meaning of the term IDC connector. . . .

The doctrine of claim differentiation . . . creates a presumption that these dependent claim limitations are not included in the independent claim. Of course, claim differentiation is not a hard and fast rule, and the presumption can be overcome by a contrary construction required by the specification or prosecution history, such as via a disclaimer. In this case, however, nothing in the specification or prosecution history rebuts the presumption of claim differentiation. We thus hold that the district court erred by incorporating the dependent claim limitations into the construction of IDC connector. . . .

The ‘896 patent discloses an optical element that houses an LED and interacts with the light emitted therefrom to increase its viewing angle. . . . The parties stipulated that “substantially ellipsoidal inner profile” should be construed as “an inner three-dimensional surface where the sum of the distances from two focal points and the points on the inner surface is substantially constant.” The dispute over this term pertains to an issue not addressed by the stipulation: whether the entire inner profile must be substantially ellipsoidal or whether the claims can be met if a portion of the inner profile is substantially ellipsoidal. This is not an uncommon occurrence—parties in patent cases frequently stipulate to a construction or the court construes a term, only to have their dispute evolve to a point where they realize that a further construction is necessary. . . .

This is a close case: whether the entire inner profile must be substantially ellipsoidal. Neither the claim language, “the optical element having a . . . substantially ellipsoidal inner profile,” nor the stipulated construction, “an inner three-dimensional surface . . .” directly addresses this issue. In this case, were we to adopt AgiLight’s proposed construction, that the entire inner profile must be substantially ellipsoidal, we would exclude the specification’s only disclosed embodiment. . . . We normally do not construe claims in a manner that would exclude the preferred embodiment, especially where it is the only disclosed embodiment. In particular, “where claims can reasonably [be] interpreted to include a specific embodiment, it is incorrect to construe the claims to exclude that embodiment, absent probative evidence on the contrary.” No such evidence exists in this case that would require us to construe “substantially ellipsoidal inner profile” in a manner that would exclude the Figure 7 embodiment. There are no statements during prosecution or in the specification that indicate the patentee’s intent to limit his claim to an entire inner profile that is substantially ellipsoidal. And the specification makes clear that the patentee considered Figure 7 to have an “ellipsoidal inner profile.” We conclude that district court erred when it required the entire inner profile to be substantially ellipsoidal. The “substantially ellipsoidal inner profile” limitation can be met if a portion of the inner profile is substantially ellipsoidal determined in accordance with the stipulation.

Given this construction, there is a genuine factual dispute as to whether the accused structure includes a “substantially ellipsoidal inner profile.” The district court recognized that a portion of the inner profile of AgiLight’s structure is “arguably” ellipsoidal. The depictions of the accused product, over which GE’s attorney imposed an image that AgiLight agrees meets the construction of “substantially ellipsoidal inner profile,” reflect a genuine factual dispute as to whether the AgiLight structure includes a substantially ellipsoidal inner profile.

We agree with AgiLight that attorney argument, alone, may not create a material question of fact regarding technical evidence. Here, however, it was AgiLight’s own expert who provided the cross-sectional images of the AgiLight devices. Those images are evidence. GE’s attorney merely placed an image of an undisputedly substantially ellipsoidal inner profile over AgiLight’s cross-sectional images. These cross-sectional images point to a genuine dispute as to whether AgiLight’s accused devices include a substantially ellipsoidal inner profile. We thus reverse the district court’s grant of summary judgment with regard to the ’896 patent and remand.

As an alternative basis for affirming summary judgment of noninfringement of the ’896 patent, AgiLight argues that its accused products do not include a “generally spherical outer profile.” . . . For similar reasons, we find that the drawings of the accused products point to a genuine factual dispute as to whether the AgiLight structure’s outer profile is generally spherical. Again, the cross-sectional images came from AgiLight’s own

expert and are themselves evidence. GE's attorney merely overlaid an undisputedly circular image over AgiLight's expert's cross section. Surely an expert is not required to create a fact question about whether something is generally spherical to preclude summary judgment.

The '055 patent is directed to an overmolding process that applies a protective sealant over the printed circuit board (PCB) to which an LED is attached, but not over the LED itself. . . . We agree with the district court that AgiLight's dome-shaped lens is not an annular gasket because it does not have "an opening." While the volume inside a dome maybe considered an "opening" in a general sense, it is not an opening in the context of an "annular gasket." This is consistent with plain and ordinary meaning of a "gasket" and with the annular gaskets disclosed in the '055 patent, which are ring-shaped (including circular, elliptical, square, etc., profiles) and can be cut from a "sheet" of material. There is no genuine issue of material fact. Under the proper claim construction, AgiLight's dome-shaped lens is not an annular gasket because it lacks an opening. We affirm the court's grant of summary judgment of the '055 patent on this ground.