

ALERT

Federal Circuit Patent Bulletin: *Source Vagabond Sys. Ltd. v. Hydrapak, Inc.*

June 16, 2014

"A 'patent holder, if challenged [under Federal Rule of Civil Procedure 11], must be prepared to demonstrate to both the court and the alleged infringer exactly why it believed before filing the claim that it had a reasonable chance of proving infringement."

On June 5, 2014, in *Source Vagabond Sys. Ltd. v. Hydrapak, Inc.*, the U.S. Court of Appeals for the Federal Circuit (Moore, Reyna, Wallach*) affirmed the district court's Federal Rule of Civil Procedure 11 sanction of \$200,054 against Source for filing a frivolous suit alleging infringement of U.S. Patent No. 7,648,276, which related to sealing mechanisms for flexible hydration reservoirs used in backpacks. The Federal Circuit stated:

In patent lawsuits, "[d]efending against baseless claims of infringement subjects the alleged infringer to undue costs – precisely the scenario Rule 11 contemplates." Rule 11(b)(2) mandates that, in any filing, counsel certifies he or she has made a reasonable inquiry that "the claims, defenses, and other legal contentions are warranted by existing law." Fed. R. Civ. P. 11. Rule 11(b)(3) also requires that counsel certify they have made a reasonable inquiry into whether their "factual contentions have evidentiary support." Sanctions may be imposed for counsel's failure to make a reasonable inquiry into either the facts or the law. . . .

The district court found that Source had an obligation to demonstrate "exactly why it believed before filing the claim that it had a reasonable chance of proving infringement." The court ultimately found Source could not demonstrate this belief as it related to either literal infringement or the doctrine of equivalents. The district court found claim construction of the slot/rod limitation "lies at the heart of this lawsuit." . . .

A basic principle of claim construction is that "the words of a claim are generally given their ordinary and customary meaning." Thus, "a claim construction analysis must begin and remain centered on the claim language itself, for that is the language the patentee has chosen to particularly point[] out and distinctly

claim[]the subject matter which the patentee regards as his invention." "The claims, of course, do not stand alone." "Rather, they are part of a fully integrated written instrument, consisting principally of a specification that concludes with the claims." "For that reason, claims must be read in view of the specification, of which they are a part."

Source argued to the district court that the slot/rod limitation (i.e., "the slot being narrower than the diameter of the rod, so that the sealer is only to be slidingly mounted sideways over the rod") should be construed to mean "the slot is narrower than the diameter of the rod together with the container folded over it, so that the sealer is only to be slidingly mounted sideways over the rod and the container." Source contends it based its construction on the specification and the "context of claim 1 of the '276 patent as a whole," and "there is no bar to proposing a claim construction that only adds words to the claim being construed." Source added words to the actual claim language, thus changing the relevant comparison from the slot to the diameter of the rod to the slot to the diameter of the rod added to the thickness of the container folded over it. Instead of looking to the words themselves, Source added language without support from the specification or prosecution history, altering otherwise unambiguous claim language, a practice this court has repeatedly rejected. . . . Source had the ability to draft the claim that way but did not. It cannot correct that failure by adding words to otherwise unambiguous claim language. . . . Source should have known it could not prevail because a court may not rewrite a claim even if giving a disputed claim its plain meaning would lead to a "nonsensical result." . . .

The district court properly determined that "claim construction is a function of the words of the claim not the 'purpose' of the invention," and that Source's construction "violates nearly every tenet of claim construction and amounts to a wholesale judicial rewriting of the claim." Source was required to "perform an objective evaluation of the claim terms" to satisfy its obligation to conduct a reasonable pre-suit evaluation. By proposing a definition that ignores the canons of claim construction, Source did not meet that standard. The district court did not abuse its discretion in imposing Rule 11(b)(2) sanctions based upon Source's frivolous claim construction arguments. . . .

The district court did not abuse its discretion in finding that, even under Source's claim construction, there was no reasonable basis for alleging Hydrapak's Reversible Reservoir II literally infringed. The district court found that Source's opposition to the Rule 11 motion did "not even contain any product measurement that would tend to show whether Hydrapak's products infringe under any version of claim construction!" . . . A "patent holder, if challenged, must be prepared to demonstrate to both the court and the alleged infringer exactly why it believed before filing the claim that it had a reasonable chance of proving infringement." Source was not prepared and failed to offer any legitimate evidence supporting a reasonable belief that it had a

meritorious direct infringement claim. . . . Since Source's claim construction is clearly inadequate, and, indeed, the literal infringement claim "lacked evidentiary support no matter how the claim was construed," the district court did not abuse its discretion in imposing Rule 11 sanctions.