

**ALERT**

# Federal Circuit Patent Bulletin: *Lighting Ballast Control LLC v. Philips Elecs. N. Am. Corp.*

June 25, 2015

*"Rule 51 does not change this result where a party's position on claim construction is made clear before the district court and the district court has rejected that position."*

On June 23, 2015, in *Lighting Ballast Control LLC v. Philips Elecs. N. Am. Corp.*, the U.S. Court of Appeals for the Federal Circuit (Lourie, O'Malley, Reyna\*), on remand from the Supreme Court of the United States, affirmed the district court's judgment entering the jury verdict that Universal Lighting Technologies, Inc. (ULT) infringed U.S. Patent No. 5,436,529, which related to an electronic ballast with the ability to shield itself from destructive levels of current when a lamp is removed or becomes defective. The Federal Circuit stated:

As a preliminary matter, we reject Lighting Ballast's argument that ULT waived its argument regarding "voltage source means" because ULT was not required to object to claim construction under Rule 51 after ULT made its claim construction position clear to the court and the court rejected it. . . . While the third and final time the district court addressed the issue of indefiniteness based on the term "voltage source means" was in the context of summary judgment, the issue of whether a claim term is governed by § 112 ¶ 6 is a claim construction issue. And claim construction is an issue for the court, not the jury. When the district court denied ULT's motion for summary judgment, it did not conclude that issues of fact precluded judgment; it effectively entered judgment of validity to Lighting Ballast.

We conclude that ULT did not waive its argument that the asserted claims are invalid for indefiniteness. It is generally accepted that a district court's claim construction order is within the class of decisions that do not terminate litigation and yet may be appealed upon resolution of the case and issuance of a final judgment. As ULT points out in its brief, ULT argued before the district court that the asserted claims were indefinite under § 112 ¶ 2 because the term "voltage source means" was governed by § 112 ¶ 6 and lacked corresponding structure in the written description. The district court addressed this issue during claim construction proceedings. The district court initially accepted ULT's position, reversed itself thereafter, and declined to resolve the issue a third time when ULT moved for summary judgment on this issue. This is sufficient to preserve the issue for appeal.

Rule 51 does not change this result where a party's position on claim construction is made clear before the district court and the district court has rejected that position. ULT was not required to object to the jury instructions to preserve this issue for appeal because it made clear to the district court its position on the issue and the issue was finally resolved by the district court prior to trial.

Having addressed the preliminary issue of waiver, we now move to the merits. The district court made findings of fact based on extrinsic evidence. Under the circumstances, it was not legal error for the district court to rely on extrinsic evidence, because the extrinsic evidence was "not used to contradict claim meaning that is unambiguous in light of the intrinsic evidence." For example, the district court determined that "while the 'voltage source means' term does not denote a specific structure, it is nevertheless understood by persons of skill in the lighting ballast design art to connote a class of structures, namely a rectifier, or structure to rectify the AC power line into a DC voltage for the DC input terminals." The district court went on to note that the language following "voltage source means" in the claim—"providing a constant or variable magnitude DC voltage between the DC input terminals"—"when read by one familiar with the use and function of a lighting ballast, such as the one disclosed by the 529 Patent, [sic] would understand a rectifier is, at least in common uses, the only structure that would provide 'a constant or variable magnitude DC voltage'". The district court further noted that "[i]t is clear to one skilled in the art that to provide a DC voltage when the source is a power line, which provides an AC voltage, a structure to rectify the line is required and is clear from the language of the 'voltage source means' term." We defer to these factual findings, absent a showing that they are clearly erroneous.

[The] expert testimony supports a conclusion that the limitations convey a defined structure to one of ordinary skill in the art. Because the district court's factual findings demonstrate that the claims convey sufficient structure, the district court was correct to conclude that the term "voltage source means" is not governed by § 112 ¶ 6. As such, we affirm the district court's decision concerning "voltage source means."

[W]here the issue raised in a motion for summary judgment is a pure question of law or, as in the case of claim construction, an issue for the court to decide, the denial of a party's motion for summary judgment generally results in a reciprocal grant of summary judgment to the other party. For issues of fact like anticipation, on the other hand, the denial of a motion for summary judgment usually only indicates that there are questions of fact to be resolved. In this case, the parties treated the district court's denial of ULT's motion for summary judgment of invalidity as though it was a grant of a motion for summary judgment of no anticipation based on JP '099, even though no such motion was ever filed. Anticipation is a question of fact that is ultimately for the jury to decide. While ULT argues it could not have prevailed on its anticipation defense if operating under the district court's amended claim construction, we have no factual record upon which to assess that argument. We conclude that, absent a stipulation between the parties regarding anticipation, ULT had to present the question to the jury in order to preserve its right to raise it before us. . . .

ULT has failed to show reversible error in the district court's construction of the term "direct current blocking means." . . . The plain language of the claims requires a direct current blocking means at every output terminal. Under the district court's construction, the jury's verdict is supported by substantial evidence. At trial, Dr. Zane testified that JP '997 does not teach a DC blocking means attached to each of the output terminals.

Dr. Giesselmann failed to offer any testimony regarding structural equivalency. As such, we hold that the district court's construction of "direct current blocking means" was not erroneous, and that the jury's verdict of no anticipation is supported by substantial evidence.